

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of:	:	
	:	
GAME SHOW NETWORK, LLC,	:	MB Docket No.
Complainant,	:	12-122
	:	
v.	:	File No.
	:	CSR-8529-P
CABLEVISION SYSTEMS CORP.,	:	
Defendant,	:	
	:	
Program Carriage Complaint	:	

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Monday,  
July 20, 2015

Volume X

Hearing Room A  
Room TW-A363

445 12th Street, SW

Washington, DC

The above-entitled matter came on for hearing, pursuant  
to notice, at 9:33 a.m.

BEFORE: THE HONORABLE RICHARD L. SIPPEL,  
Chief Administrative Law Judge

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CLOSED SESSION: 2653 to 2656

OTR: 9:33 a.m.

Lunch: 12:33 p.m. to 1:48 p.m.

OTR: 4:02 p.m.

1 P-R-O-C-E-E-D-I-N-G-S

2 (9:33 a.m.)

3 JUDGE SIPPEL: Let's go on the record. This is our last  
4 day in session. We will be back for argument, but this is our last  
5 day of testimony. And I've got no preliminary matters. Mr. Cohen,  
6 are you ready to proceed?

7 MR. COHEN: Yes, Cablevision calls Mr. Orszag.

8 WHEREUPON,

9 JONATHAN ORSZAG

10 was called as a witness by Counsel for the Defendant and, having  
11 been first duly sworn, assumed the witness stand, was examined and  
12 testified as follows:

13 JUDGE SIPPEL: If we were a band of conspirators, we  
14 would now all be together, trial conspirators. Mr. Phillips, good  
15 morning. I'm sorry, sir. I know you're here today from New York,  
16 special trip.

17 MR. PHILLIPS: Well, Your Honor, I'm always happy to be  
18 down here.

19 JUDGE SIPPEL: Really?

20 MR. PHILLIPS: You know what, this weather, as bad as it  
21 is here, I venture to say it may be worse in New York today.  
22 They've got a bad air advisory on and the mayor's telling people  
23 not to go outside.

24 JUDGE SIPPEL: Mayor's telling people not to go outside.  
25 Is he kidding?

1 MR. PHILLIPS: It's a hot, muggy, nasty day up there.

2 JUDGE SIPPEL: Yes, well I think we could take it down  
3 here because we're probably more used to it.

4 MR. PHILLIPS: Well, you've got a cleaner city here, too.

5 JUDGE SIPPEL: We do, we do. Well I'm going to report  
6 all that to my son-in-law who's on the City Council. Let's proceed.

7 DIRECT EXAMINATION

8 BY MR. COHEN:

9 Q Mr. Orszag, where are you employed?

10 A I am a Senior Managing Director at Compass Lexicon, an  
11 economic consulting firm.

12 Q And can you briefly -- it's been a little while since  
13 you've been here, so can you remind the Judge of your professional  
14 background and experience?

15 A Sure. I started my career as an economic advisor to  
16 President Clinton, working at the White House. I then served as  
17 the Director of Policy and Strategic Planning at the U.S.  
18 Department of Commerce. And as people may know, the Department of  
19 Commerce is the Administration's representative to the FCC.

20 So I spent a lot of time on telecommunications matters  
21 when I was in government. And then when I left government, I  
22 started this economic consulting firm, and I've been specializing  
23 in issues, economic issues related to business conduct, and have  
24 done a lot of work in the telecommunications and media industries.

25 Q Okay. Can you tell us a little bit about some of your

1 assignments in the cable industry?

2 A Sure. I've worked on merger matters involving the cable  
3 industry, I've worked on regulatory matters involving the cable  
4 industry. I have been involved in several of these matters  
5 involving discrimination claims, and then other cases involving  
6 cable programming issues.

7 Q Mr. Orszag, I'm going to hand you a binder, as everybody  
8 in this case gets a binder, that contains your direct testimony.

9 A Thank you, sir.

10 Q And some appendices.

11 JUDGE SIPPEL: Let me give my general instruction that if  
12 at any time you feel uncomfortable, you can remove your jacket.  
13 You'll probably see others doing it before you do. Well, it's not  
14 too bad this morning, but let's see how it is.

15 THE WITNESS: I'll try to hold off until the last  
16 possible minute.

17 JUDGE SIPPEL: Nothing lost, nothing gained -- nothing  
18 lost by keeping it on, believe me. I will be amongst those that  
19 take it off. I'm sure you can --

20 MR. COHEN: Okay, let me just ask people. I saw a little  
21 duplicating error in the binder I opened. Does everybody have 334  
22 as the first tab?

23 JUDGE SIPPEL: Three, three, four? I do. It's direct  
24 testimony.

25 BY MR. COHEN:

1 Q Okay. So Mr. Orszag, would you look at Exhibit 334, Page  
2 number 334. And that's the first tab. Is this your direct  
3 testimony?

4 (Whereupon, the above-referred to  
5 document was marked as Cablevision  
6 Exhibit No. 334 for identification.)

7 A Yes, it is.

8 Q And is 335 the appendices to your direct testimony?

9 (Whereupon, the above-referred to  
10 document was marked as Cablevision  
11 Exhibit No. 335 for identification.)

12 A Yes, they are.

13 Q Okay. Anything you're aware of that's not accurate in  
14 334, 335?

15 A Not that I'm aware of.

16 MR. COHEN: Your Honor, I offer Cablevision Exhibits 334  
17 and 335.

18 MR. PHILLIPS: No objection, Your Honor.

19 JUDGE SIPPEL: It's received.

20 (Whereupon, the above-referred to  
21 documents were received into  
22 evidence as Cablevision's Exhibit  
23 Nos. 334 and 335.)

24 BY MR. COHEN:

25 Q What was your assignment in this case that you were given

1 by Cablevision?

2 A I was asked to assess from an economic perspective the  
3 claims put forward by the Game Show Network with regard to the  
4 retiering or the tiering of the Game Show Network on the  
5 Cablevision cable systems.

6 Q Okay. And if you --

7 JUDGE SIPPEL: Just a minute. Let me just put this a  
8 little bit better from my perspective. There was a complaint filed  
9 back in 2011, are you aware of that?

10 THE WITNESS: Yes, I am.

11 JUDGE SIPPEL: Have you been retained since 2011? Or when  
12 were you retained, let me put it that way.

13 THE WITNESS: I would have to look at when my first  
14 report was in this case, but I believe it was 2012 give or take.  
15 I may be misguided. It may have been '11, '12, but that time  
16 frame.

17 JUDGE SIPPEL: But did you start your analysis before the  
18 case transferred to the Administrative Law Judge side? There was  
19 a hearing designation order?

20 THE WITNESS: If I could look at my CV, I could tell you  
21 the dates.

22 JUDGE SIPPEL: Sure.

23 THE WITNESS: So I filed my first report in this case in  
24 December, in the FCC proceeding part of this in December of 2011,  
25 and then another in February of 2012. And then I believe it was

1 transferred to this process. And I filed another report in  
2 December of 2012, and then there have been subsequent ones in '13  
3 and in 2014 and now 2015. There have been a lot of reports and  
4 that's --

5 JUDGE SIPPEL: Okay. I was just simply trying to  
6 establish that you were just not retained for purposes of this  
7 litigation. This litigation meaning this hearing designation order  
8 before myself. It was before that. The hearing designation by the  
9 way is May of 2012.

10 THE WITNESS: Right. So my first report was in December,  
11 so it was before that.

12 JUDGE SIPPEL: Thank you.

13 BY MR. COHEN:

14 Q Okay. And now there have been a lot of reports but I  
15 want to focus on your testimony briefly before. And I think your  
16 principal conclusions are set out in Paragraph 10. So can you just  
17 walk us through those conclusions and then we'll dive into a few of  
18 them, not all of them --

19 A Sure.

20 Q -- in some more detail.

21 A I have included in my testimony here, in Exhibits 334 and  
22 335, an extensive amount of empirical research analyzing the  
23 question of competition among programming networks. And what I  
24 find is that there's no significant competition between GSN on the  
25 one hand and the Cablevision-affiliated networks on the other.

1 I find that because of that lack of competition between  
2 the Cablevision-affiliated networks, that's WE tv and Wedding  
3 Central, the Cablevision affiliated networks and GSN, that there's  
4 no incentive for Cablevision to engage in the acts alleged in this  
5 complaint.

6 I find that the Cablevision decision to distribute GSN on  
7 the Sports and Entertainment Tier was consistent with rational  
8 business conduct unmotivated by a desire to help the programming  
9 arm of Cablevision and that Cablevision's distribution of GSN on  
10 the Sports and Entertainment Tier did not unreasonably restrain the  
11 ability of GSN to compete.

12 Q Okay. I want to focus for the most part on the first set  
13 of opinions relating to competition. So did you reach a conclusion  
14 with respect to whether GSN on one hand and WE and Wedding Central  
15 on the other compete for viewers?

16 A Yes, I did.

17 Q Okay. And what empirical work did you do to support that  
18 conclusion?

19 A I have a whole host of different analyses that are  
20 included in here. I looked at the behavior of viewers after GSN  
21 was tiered, I looked at the behavior of viewers when they watched  
22 TV on an every day basis, what channels do they switch to.

23 I looked at the questions of how do viewers -- what do  
24 they watch and how do they overlap. And I used both set-top box  
25 data from Cablevision and also Nielsen data. So all of those

1 analyses pointed to the same direction, that there's not  
2 significant competition between GSN and the Cablevision-affiliated  
3 networks.

4 Q Okay. And before we turn to those analyses, let me just  
5 pause for a second on the set-top box data. Why did you use set-  
6 top box data as your principal data source?

7 A Because it's an extremely rich data set. Cablevision at  
8 the time was collecting data from its subscribers about  
9 how those folks were tuning the channels, what they were watching  
10 on TV whereas Nielsen includes just roughly 800 people in its  
11 sample from the New York DMA, and only 300 to 400 Cablevision  
12 subscribers.

13 So when you have 300 to 400 potential observations versus  
14 gives you a very powerful piece of evidence, and it  
15 also allows us to do much more detailed analysis than anyone's ever  
16 done in any of these cases.

17 Q Okay. And did you do any comparison of the Nielsen data  
18 and the set-top box data to see if they were giving you  
19 approximately the same information?

20 A Yes, I did.

21 Q So turn if you would, just to expedite this, what we've  
22 done, Your Honor, is we've taken some of the tables and figures  
23 from this lengthy report and put it behind tabs. So to make the  
24 record clear, if you turn to the tab that says Figures A1 and A2.  
25 And this is from, the source of this is it says at the bottom, this

1 is Cablevision Exhibit 335. That's your appendix, right?

2 A That's correct.

3 Q Page 4. And can you tell us what Figures A1 and A2  
4 represent behind this tab?

5 A Sure. What I did was I took the Nielsen data for the New  
6 York DMA and for the Cablevision subscribers included in the  
7 Nielsen data and I compared the ratings of the, that you get from  
8 the set-top box data versus the Nielsen data.

9 And they show that they are very similar. The  
10 correlation is extremely high between them, suggesting that they're  
11 showing a similar pattern of viewership in the set-top box data and  
12 in the Nielsen data.

13 Q Okay. Now let's go back to the tests that you performed.  
14 And did you do something called a direct test?

15 A Yes, I called it the direct test, yes.

16 Q And what were trying to measure in your direct test?

17 A What I was trying to do was to look at the question of  
18 when GSN was retiered, what happened to the viewership of those  
19 subscribers who lost access to GSN? Where did they go? Did they  
20 start watching more ABC, more CNN, more Oxygen, or more WE? And  
21 that informs the question of whether there's significant  
22 competition.

23 Q Okay. And look at Table 2 in your analysis. And again,  
24 rather than going to the report, Table 2 is in the back of this  
25 binder but it comes from your Exhibit 334 Page 34. So turn to the

1 tab if you would that says Table 2. It's behind, Your Honor, 335.  
2 Towards the back of the book there were a series of tables. And  
3 this is just taken right out of your report, right, of your  
4 testimony from Page 34?

5 A That is correct, that is correct.

6 Q All right. And could you walk us through what's  
7 reflected in Table 2 and tell us the importance of this?

8 A Sure. So what this shows is that when some of the  
9 Cablevision subscribers who previously subscribed or had access to  
10 GSN no longer could view GSN because they no longer had access to  
11 the sports tier.

12 What this asks the question empirically where do they go?  
13 And what this shows is that the number one channel that people went  
14 to when they did not have access to GSN was CNN. The number two is  
15 Fox, then USA, then TV Land. The number 16 channel that they went  
16 to was WE, and that was a roughly 1.4 second increase in GSN  
17 viewership due to the retiering of GSN.

18 Q Okay. Before I turn to WE, let's just make sure we  
19 understand what you did. What periods of time were the before and  
20 after part of your analysis?

21 A I looked at April 2010 versus April 2011. So a before  
22 period, April 2010, versus an after period. Since the retiering  
23 was February 2011, so April 2011.

24 Q Okay. So let's focus on CNN, number one, just to  
25 understand what the columns represent. What are reflected in the

1 various columns, share, seconds per day? Tell us what this  
2 analysis means.

3 A Well, what this suggests is that because of the  
4 retiering, the viewers who lost access to GSN watched 6.7 seconds  
5 per day more of CNN as a result of the retiering. They watched six  
6 seconds per day more of, say, Fox. And they watched 1.4 seconds  
7 per day more of WE.

8 Q Which is ranked 16th among the networks?

9 A Sixteenth among the networks, yes.

10 Q And what conclusion do you draw from this analysis that's  
11 reflected in Table 2?

12 A That the effect on WE viewership was de minimis. And so  
13 there would be no incentive or no economic benefit to WE from the  
14 retiering of GSN.

15 Q Okay. Can you explain that a little bit more? Why not?

16 A Well, 1.4 seconds is so small, I mean, we're talking such  
17 a small effect. If you think about this, WE is a national network.  
18 And Cablevision is roughly three percent of overall WE viewership.

19 So we're talking about a very small increase in  
20 viewership for a relatively small share of overall WE viewership.  
21 On the order of magnitude, we're talking about a 0.03 percent, 0.03  
22 percent increase in WE viewership which is so small that it would  
23 never register on an advertiser, for an advertiser.

24 It would never register on any Nielsen data. It wouldn't  
25 register on anything, including the business people's minds at WE

1     that this would be a benefit to them.

2       Q     Okay. And you mentioned Nielsen data in that last  
3     answer. Did you look at any Nielsen data to confirm the results of  
4     your direct test that are reflected at, among other places, in  
5     Table 2?

6       A     Yes, I did.

7       Q     Okay, and tell us what you did.

8       A     I looked at what happened to the Nielsen ratings for WE  
9     among Cablevision subscribers in New York versus the Nielsen  
10    ratings for all subscribers in New York. And one would expect  
11    since there was a retiering of GSN on Cablevision but not on other  
12    MVPDs within New York that if there was significant substitution  
13    between GSN and WE, that WE ratings would go up among the  
14    Cablevision subscribers.

15            In fact, you found the opposite. WE viewership went up  
16    for all, for all of New York, but it actually went down for  
17    Cablevision subscribers, the complete opposite you would find if  
18    there was significant competition between the two networks.

19       Q     Okay. I'm sorry, Your Honor, did you have something for  
20    Mr. Orszag?

21            JUDGE SIPPEL: Hold on just a second, yes. It appears  
22    that in the right column there are several channels that have lost  
23    viewership due to the GSN retiering.

24            MR. COHEN: These are the negatives, Your Honor, you're  
25    asking about?

1 JUDGE SIPPEL: Down towards the bottom here.

2 MR. COHEN: With Number 64 filled in, down at the bottom?

3 JUDGE SIPPEL: On the right hand side. Yes, it's, sorry.

4 Yes, you got the negatives, yes. Minus, yes, all these minuses.

5 MR. COHEN: All right, I can get the witness to explain  
6 that to the Judge, to Your Honor.

7 JUDGE SIPPEL: Do you see where I'm at?

8 THE WITNESS: Yes, I do.

9 BY MR. COHEN:

10 Q So look at -- yes, on Table 2 beginning at 64 which is  
11 Galavision going down you have negative seconds as opposed to  
12 positive. Can you explain why you see that kind of effect after  
13 the retiering?

14 A This is measured using statistical analysis. And each of  
15 those observations is not statistically different from zero. So on  
16 any statistical analysis there's some noise in the modeling.

17 And what one wants to ask the question is is that  
18 reliably measured relative to zero. And these estimates all are  
19 not reliably different from zero. And so you could view them as  
20 just being zeros and it's just a product of statistical noise.

21 JUDGE SIPPEL: Does anybody understand what statistical  
22 noise is? I've never heard that before.

23 THE WITNESS: Let me try to explain, if I may. One  
24 observes patterns of data, and you see observations. And what a  
25 regression does is it tries to find the best fit for the data. But

1 it will never be a perfect fit, it will always be the best fit.

2 And that best fit, there will be some observations that  
3 are lower than your estimate and some that are higher because it's  
4 using statistics. And the question you then ask is is that  
5 difference statistically significant?

6 And for each of these negatives, it's not statistically  
7 significant. So one way to simplify all this, Your Honor, is you  
8 could view all of those numbers as just being zero because they're  
9 not reliably different negative. They're not statistically  
10 negative. They are functionally equivalent to zero from a  
11 statistical perspective.

12 JUDGE SIPPEL: Okay. So it's referred to loosely as, or  
13 colloquially as noise?

14 THE WITNESS: Yes.

15 JUDGE SIPPEL: Which is the inference being is it's not  
16 loud noise?

17 THE WITNESS: Precisely.

18 JUDGE SIPPEL: It's just --

19 THE WITNESS: It's soft noise.

20 JUDGE SIPPEL: Just soft noise, okay. So that's, like,  
21 something that Chief Justice Roberts could describe a dissenting  
22 opinion, perhaps.

23 THE WITNESS: I'm not a lawyer, so I don't want to make  
24 an observation about that.

25 JUDGE SIPPEL: No, you don't have to. Nobody has to.

1     Okay, all right. I think I understand. Well, I'll say I'm willing  
2     to accept that as an explanation.

3             BY MR. COHEN:

4         Q     Okay. So let me move on to the second test that you did.  
5     You did something called a switching test in your analysis, right?

6         A     That is correct.

7         Q     And before we kind of look at the results of that, would  
8     you lay out for the Court what you were trying to measure and how  
9     you went about measuring in your switching analysis?

10            COURT REPORTER: I'm sorry, Your Honor. I'm picking up  
11     some very loud, I believe it's a vacuum noise from outside. Let me  
12     also move my microphone.

13            JUDGE SIPPEL: Would somebody tell them to knock off the  
14     vacuum?

15            MR. GORDON: I think it's outside. It's a leaf blower.

16            (Off microphone comments)

17            JUDGE SIPPEL: Outside.

18            MR. COHEN: Should we close the door?

19            COURT REPORTER: And Mr. Cohen, I'm sorry, would you mind  
20     asking that question again because I stopped you earlier?

21            MR. COHEN: Yes, of course. Of course there's a leaf  
22     blower. I'm surprised they're not blowing leaves in the courtroom.

23            (Off microphone comment)

24            MR. COHEN: Seems like the wrong season, doesn't it?

25            JUDGE SIPPEL: It's not even a lawn mower.

1 BY MR. COHEN:

2 Q All right. Okay, let me restate the question, Mr.  
3 Orszag. You did something called the switching analysis, correct?

4 A That is correct.

5 Q Could you describe for the Court what you did and what  
6 the purpose was of your switching analysis?

7 A As I described, the set-top box data is extremely rich,  
8 and it includes detailed information about people's viewing. And  
9 so what I could do is I could look at somebody, let's just say, who  
10 is watching WE and I could say what happened to the viewership?  
11 Where did they switch the channel to?

12 Did they switch the channel to ABC? Did they go to watch  
13 ESPN? Did they go to watch Oxygen or did they go to watch GSN?  
14 And so I could do statistical tests of that very question about  
15 switching from one channel to another.

16 Q Okay. And just before we turn to the results, if you  
17 find a lot of switching, does that tell you that the networks are  
18 competitive with each other?

19 A It doesn't. What I would say is it's suggestive, but  
20 it's not determinative and the reason is because an example I use  
21 in my report is I'm a big fan of Homeland. That's on Showtime.  
22 I'm also a big fan of Jon Stewart, which is on Comedy Central.

23 If I switch from Homeland to Comedy Central, that is not  
24 a substitution, they're not economic substitutes because I'm going  
25 to watch both. So they don't substitute for each other. But the

1 absence of switching is strongly indicative that they're not  
2 competitive.

3 Q And why is that?

4 A Because if people aren't switching from one channel to  
5 the other, then they're not viewing them -- it's very unlikely that  
6 they're viewing them as substitutes for each other.

7 Q Okay. And could you turn please to --

8 JUDGE SIPPEL: Just let me follow up.

9 MR. COHEN: Yes, Your Honor.

10 JUDGE SIPPEL: Are you talking about switching within the  
11 same genre, or obviously you weren't talking about that with  
12 Homeland versus Jon Daily. Just going to another type of  
13 programming that you're interested in?

14 THE WITNESS: It's not within genre, it's just how people  
15 are actually watching TV. So when they turn the channel from WE,  
16 what do they turn the channel to? And I use this, I ensure that  
17 I'm not counting channel surfers. So you have to stay on the  
18 channel for a minute in order for it to be counted as a quote  
19 switch.

20 So you could think about this as if you're watching WE  
21 and you turn the dial, what do you turn the dial to and what do you  
22 stay on after you've turned the dial through the various channels  
23 that are out there?

24 JUDGE SIPPEL: All right.

25 BY MR. COHEN:

1 Q Okay. Turn to Table 4. I think this will bring it to  
2 life. So Table 4 is from Exhibit 334 Page 40. But we've got it  
3 behind this tab that says Table 4 in your book. And at the top it  
4 says From WE TV Switching Rates. So walk us through this analysis  
5 and tell us what you found.

6 A What this looks at is what percentage of viewers, who are  
7 watching WE tv, where do they go when they switch channels. It  
8 shows they most often switch to Bravo, and they switch to AMC,  
9 Lifetime, A&E. They switch to 32 channels, other channels before  
10 they switch to WE tv, roughly 1 in 200 times they switch to GSN.

11 Q And Table 5 has got another switching analysis. What  
12 does that show?

13 A This is just the inverse. Instead of asking the question  
14 of when somebody leaves WE tv where do they go, this asks the  
15 question in the inverse of when they come to WE tv, where do they  
16 come from? And you see a very similar pattern in that GSN is  
17 number 32 on the list.

18 Q Okay. And then last I want to turn to Table 7. It  
19 should be the next tab in your book. Table 7 comes from Page 47 of  
20 Exhibit 334. And that says From GSN Switching Rates. And what's  
21 reflected here?

22 A Again, I engaged in the same analysis, on an identical  
23 analysis, but now I did it from GSN's perspective and I asked the  
24 question of when somebody's watching GSN, where do they switch to?  
25 So they switch to ABC, CBS, SOAPnet, Fox, NBC, TV Land, those are

1 the top six. WE tv on the list is number 22.

2 Q And from these various switching analyses, from and to WE  
3 and from GSN, what conclusions do you draw?

4 A That WE tv and GSN are distant in terms of how viewers  
5 switch. And so there's not significant competition between the two  
6 channels.

7 Q Now there's been some testimony in this trial about  
8 something called neighborhooding. Are you aware of that?

9 A Yes, I am.

10 Q Okay. And do you understand what neighborhooding is in  
11 the context of cable television?

12 A Yes, I do.

13 Q Just give us your explanation so we're on a level playing  
14 field.

15 A It's that MVPDs will often, not always but often put  
16 channels that are in similar genres near each other. So you may  
17 find some sports channels that are grouped together, et cetera.

18 Q And did you consider the impact of neighborhooding on  
19 these switching analysis to see if it influenced the degree to  
20 which which viewers switched from or to GSN and WE tv?

21 A It is something I considered, yes.

22 Q And what conclusion did you draw from that?

23 A Well, GSN is -- I believe it's channel 88 on the  
24 Cablevision dial. And if one looks at what people switch to, ABC  
25 in New York is channel 7.

1 Q What table are we looking at?

2 A We're on Table 7 right now.

3 Q Okay.

4 A I'm sorry. We're at Table 7, ABC is channel 7. So  
5 somebody who is switching from GSN has to physically make a number,  
6 they probably type in 007 or they're hitting the down arrow a lot  
7 of times. CBS is number two.

8 MR. PHILLIPS: Your Honor, if I may, none of this is  
9 covered in his report. This is new analysis for the first time,  
10 I'm hearing it for the first time today. He's never talked about  
11 what channel ABC was on, what channel CBS was on, or the like.

12 MR. COHEN: I think you're wrong, Mr. Phillips. He has  
13 a long footnote about --

14 JUDGE SIPPEL: There's 97 pages in his testimony.

15 MR. COHEN: He has a long footnote about --

16 MR. PHILLIPS: I'm happy to be wrong, Mr. Cohen, if you  
17 show it to me.

18 MR. COHEN: Yes, I will. And I need to find it, sorry.  
19 I have the same problem.

20 THE WITNESS: It's Footnote 49 I believe.

21 MR. COHEN: Okay, there we go.

22 JUDGE SIPPEL: Footnote 49?

23 MR. COHEN: Yes, footnote 49.

24 JUDGE SIPPEL: Just ask the author.

25 MR. PHILLIPS: Okay, I take it back. Withdrawn.

1 BY MR. COHEN:

2 Q Okay, so let me go back to the question, okay? With  
3 respect to Table 7, can you tell us how this concept of  
4 neighborhooding affects or doesn't affect your analysis of switch  
5 breaks?

6 A Well, it's not clear to me how neighborhooding would  
7 affect Table 7 because the channels that people are switching to  
8 are so far away. SOAPnet and TV Land for example are in the 30s  
9 and 50s so you actually have to switch a number of channels. And  
10 WE tv is still very far down the list next to BET which is also  
11 very far away.

12 Q Okay, let me talk about a third analysis briefly that you  
13 did on viewership. So you did something called a direct test that  
14 we talked about, right?

15 A Yes.

16 Q And you did something called a switching analysis, right?

17 A That's correct.

18 Q Both of those led you to conclude there was no  
19 significant competition for viewers between GSN on the one hand and  
20 WE on the other hand?

21 A That is correct.

22 Q Okay. Did you look at something called viewer overlap  
23 using Nielsen data?

24 A Yes, I did.

25 Q Okay. And is that the duplication analysis that Mr.

1 Singer, Dr. Singer before had testified about?

2 A It encompasses that. It's broader than that because I  
3 did it a number of different ways. But it includes the analysis  
4 that Dr. Singer did.

5 Q Okay. So tell us please what you did with respect to  
6 duplication using the Nielsen data to test the question of whether  
7 there was competition from viewers between networks.

8 A Well, I started with the first question is what's the  
9 overlapping viewership? So among all the people who view WE tv,  
10 what percentage of them view GSN? And what percentage of them view  
11 all other channels? And so if you look at Table 8, table --

12 Q Okay, so let's all get there. Table 8 which is a tab in  
13 your book, and that comes from Page 56 of your direct testimony?

14 A Yes, it does.

15 Q Okay, so Table 8, go ahead.

16 A What it shows is that among the people who watch WE tv,  
17 percent of them watch percent watch percent  
18 watch . So the overlap between WE tv viewers and 61 other  
19 channels is higher than the overlap between WE tv and GSN  
20 viewership which is only percent. So percent of WE tv  
21 viewers also watch GSN.

22 Q Okay. And did you do specific duplication analyses as  
23 well as looking at this overall overlap?

24 A Yes, I did.

25 Q Okay. And can you tell us what you did, please?

1       A     I looked at -- there are multiple duplication reports.  
2     I actually looked at it every which way one could, or at least that  
3     I could come up with. I looked at the --

4       Q     Well, I mean, let me try to center us, I think it will  
5     help. If you look at the tab that says duplication results, that's  
6     behind Tab 10 in your book. And this is a copy of Pages 77 and 78  
7     of your direct testimony that we've just culled out here to make it  
8     easier.

9            So if you would walk us through Pages 77 and 78, does  
10    this reflect your duplication analyses?

11    A     Yes, it does.

12    Q     Okay. Take us through this, please.

13            JUDGE SIPPEL: What table is this?

14            THE WITNESS: Your Honor, I think it's the table page  
15    before you're on.

16            MR. COHEN: It's in front of Table 16, Your Honor. It  
17    just says duplication results.

18            JUDGE SIPPEL: I see it.

19            MR. COHEN: Right, and it's Pages 77 and 78 of his  
20    testimony.

21            JUDGE SIPPEL: I see it.

22            MR. COHEN: So we wouldn't have to flip back and forth as  
23    much.

24            JUDGE SIPPEL: What paragraphs of the direct testimony?

25            MR. COHEN: This is from Page 77 of the direct testimony.

1 And it's in Paragraph 93.

2 JUDGE SIPPEL: Thank you.

3 THE WITNESS: So there's three different tests that  
4 measures the duplication that Nielsen has. They have primary  
5 duplication, secondary duplication, and both duplication. Then one  
6 can look at it from the perspective of WE or the perspective of  
7 GSN.

8 And then one can also cut the data for different  
9 demographic groups. Say for persons 18 and over, females 18 and  
10 over or persons 25 to 54 or females 25 to 54. So you think about  
11 this as there's three different measures that Nielsen has.

12 You can measure it for either way going from GSN to WE or  
13 WE to GSN. And then there's four different demographic groups. So  
14 I do 24 different tests in terms of the Nielsen duplication  
15 ratings.

16 BY MR. COHEN:

17 Q And what conclusion do you draw from all this duplication  
18 work that you've performed?

19 A In five out of the six, WE and GSN are quite distant in  
20 the duplication ranks.

21 Q Let me stop you. When you say quite distant in  
22 duplication ranks, what do you mean?

23 A The highest ranking that they have in those five out of  
24 six is fifteenth, and the lowest looks like it is sixty-fifth. So  
25 they link somewhere between 15th and 65th in those different

1 measures. And in only one are they highly ranked.

2 Q Okay. And the conclusion you draw overall from that with  
3 respect to viewer overlap?

4 A Well, given the fact that I have trouble putting into a  
5 competition framework the both duplication concept, both from the  
6 WE perspective or the GSN perspective, both of those, it doesn't  
7 make sense to me as a economic matter.

8 I discount the both duplication. The overall conclusion  
9 from this is that like my previous analyses, the GSN and WE are not  
10 close to each other in the product space. They do not have  
11 significant competition with each other.

12 Q Okay. In terms of viewers?

13 A In terms of viewers.

14 Q Now, did Dr. Singer reach a different conclusion that you  
15 addressed in your testimony?

16 A Yes, he did.

17 Q And what was his conclusion?

18 A The only measure that he focused on was the both  
19 duplication rank from the perspective of GSN.

20 Q Okay. And do you agree with the conclusion that he drew?

21 A No, I don't because I struggle what it means from a  
22 competition perspective. From a competition perspective, you  
23 should think about if WE -- what are the constraints on WE or what  
24 are the benefits to WE from the retiering of GSN, neither of which  
25 would be answered from the both duplication measures.

1       Q     And what about -- what importance is it to you, if any,  
2     of the fact that by the rest of the duplication measures, there is  
3     no significant overlap?

4       A     That's evidence that there's not significant overlap.  
5     But one has to look at each of these measures has pros and cons.  
6     And for example, one of the big cons of this measure is that it's  
7     --

8       Q     Is this measure both duplication?

9       A     The duplication, all the duplication measures.

10      Q     Okay.

11      A     All the Nielsen duplication measures is it's based on a  
12     very low threshold of viewership. You have to watch six minutes of  
13     one channel in a three month period. That's a very low level of  
14     viewership, at least in my mind, relative to the overall viewership  
15     that we observed in the set-top box data for viewers.

16            And so this is the weakest of the tests that I do in  
17     terms of importance for significance of competition. And among the  
18     duplications, the both duplication is the weakest among that group.

19      Q     All right. And having said that though, but just putting  
20     together duplication, switching and your direct test, what  
21     conclusion do you draw overall about competition for viewers  
22     between GSN on the one hand and WE or Wedding Central on the other  
23     hand?

24      A     The economic evidence shows that there's not significant  
25     competition between the networks.

1 Q Okay. I want to turn to the second part of your  
2 competition analysis of competition for advertisers. Okay, did you  
3 examine that question?

4 A Yes, I did.

5 Q Okay. And what work did you do with respect to  
6 determining if WE on the one hand and GSN on the other compete for  
7 advertisers?

8 A I did a whole host of work, all of which is in this  
9 rather lengthy direct testimony. I focused on the demographics of  
10 the two channels, I did the statistical test of the demographics of  
11 the channels. I looked at advertising rates, I looked at the  
12 advertising spend of large advertisers. So I do a whole host of  
13 analyses as part of my testimony in this case.

14 Q Okay. And I want to focus you on only one or two of  
15 those. So you mentioned demographic similarity. What's the  
16 importance of demographic similarity in determining whether there's  
17 overlap with advertisers?

18 A As folks in the room probably know, advertisers are often  
19 seeking to attract the eyeballs of a particular demographic, say  
20 females 25 to 54. And so when they're trying to attract that  
21 demographic, they're looking for channels that have a high  
22 percentage of viewers who are in that demographic.

23 So the distribution of your demographics is important for  
24 understanding what advertisers are going to come to you, and then  
25 the competition that channels may have with each other to attract

1 the dollars from that advertiser.

2 Q Okay. And did you do a detailed comparison of the  
3 demographics of the networks?

4 A Yes, I did.

5 Q Okay. Turn, I think it's set out in Table 16 which comes  
6 from Page 86 of your direct testimony. That should be the next  
7 tab, Your Honor. And let me know when you're there, I have a  
8 couple of questions for Mr. Orszag.

9 JUDGE SIPPEL: Okay. I'm just trying to complete some  
10 notes.

11 MR. COHEN: Yes, of course. We'll wait for you.

12 JUDGE SIPPEL: Just a second. What's that again, now?

13 MR. COHEN: Okay, Table 16 which comes from Page 86 of  
14 his direct testimony, 334. It says viewer demographics, Q4 2010.

15 JUDGE SIPPEL: I've got it.

16 BY MR. COHEN:

17 Q Okay, all right. So with reference to this Table 16, Mr.  
18 Orszag, can you walk us through your key conclusions with respect  
19 to demographic similarities or dissimilarities between WE and GSN?

20 A According to the data, the empirical evidence for the  
21 fourth quarter of 2010 according to Nielsen, the demographics of  
22 GSN and WE tv are significantly different.

23 Q All right. And --

24 A For example, I was going to say that percent of GSN  
25 viewers were 65 and over. So more than half of GSN viewers were 65

1 and over whereas the equivalent number from WE tv is just under  
2 percent.

3 Q Okay. And I want to focus you on a couple of other  
4 lines. You see there's a female share viewership line overall?

5 A Yes, I do.

6 Q Okay, and then two below that there's female sharer  
7 viewership age 25 to 54. What does that entry represent? Do you  
8 see that? It's one, two, three, five down from the top.

9 A So among viewers 25 to 54, percent of WE tv, of that  
10 group of viewers, percent of those viewers are women on WE tv  
11 whereas percent of 25 to 54 year olds watching GSN are women.

12 Q Okay. And if you go down another three lines, I want to  
13 make sure we understand clearly what you have. You have age 25 to  
14 -- two more lines down. Females age 25 to 54 viewership share. So  
15 it's one, two, three, four, five, six, seven, eight, nine, I think  
16 it's the tenth entry.

17 A Yes.

18 Q Females age 25 to 54 viewership share.

19 A It's just above median viewer income.

20 Q Right.

21 A What this says is that percent of WE tv's viewers are  
22 women age 25 to 54. The comparable number for GSN is percent.

23 Q Okay.

24 A So that's a very significant difference in the viewer  
25 demographics of those two channels.

1 Q Okay, and just to be clear, the percent of female  
2 viewers age 25 to 54, that's of all viewers, men and women of all  
3 ages?

4 A Yes.

5 Q Okay. And the is the same for GSN?

6 A Yes, it is.

7 Q And now did you also do some statistical tests to look at  
8 the similarity of these networks' demographics?

9 A Yes, I did.

10 Q Okay. And I don't want to go through all the details of  
11 those tests. But it's called in your report, in your testimony, a  
12 distance analysis?

13 A Yes, it is.

14 Q Okay. So at a high level, can you tell us what a  
15 distance analysis is and what conclusions you reached as a result  
16 of your distance analysis?

17 A One can more formally put the demographic information  
18 into a statistical model to ask the question of how far do products  
19 sit in the product space. And so I include the demographic  
20 information in my model.

21 And I look at the question of distance. And when one  
22 looks at this statistically, one finds that GSN and WE are 75 spots  
23 apart. That is there are 74 other channels that are closer to WE  
24 than GSN when one includes it in a statistical analysis.

25 Q Okay. A couple of, so first of all, would you turn to

1 table --

2 JUDGE SIPPEL: Is that closer to GSN in terms of  
3 viewership?

4 THE WITNESS: No, this is in terms of viewer  
5 demographics.

6 JUDGE SIPPEL: Demographics. So, okay.

7 MR. COHEN: Yes, in fact --

8 JUDGE SIPPEL: I'm with you.

9 MR. COHEN: Yes, if you turn to Table 17 I think that  
10 that reflects that 75 number. And, again, just I was going to ask  
11 the same question that His Honor just asked, which is when you say  
12 they are closer, closer in terms of what, that there are 74  
13 networks that are closer?

14 THE WITNESS: That in terms of the viewer demographics,  
15 that there are networks that are more alike in terms of the viewer  
16 demographic matrix.

17 BY MR. COHEN:

18 Q Okay. And the demographics, do they just include age and  
19 gender?

20 A They include more details on that than age and gender,  
21 but those are two key factors.

22 Q And what are some of the others?

23 A Median income, whether - for example, the data showed  
24 that the median income of WE viewers is much higher than the median  
25 income of GSN viewers.

1           The data also showed that GSN viewers tend to be more  
2 rural than WE viewers, and so it's including information like that  
3 in the analysis.

4       Q     All right. And what importance would this demographic  
5 analysis, to your understanding, have to an advertiser?

6       A     Well advertisers when they are thinking about buying,  
7 they are looking for a key demographic, and so channels that are  
8 more alike are more likely to be competitive.

9       Q     Now Dr. Singer did a distance analysis as well, did he  
10 not?

11      A     Yes, he did.

12      Q     Okay. And I think you have offered some criticisms of  
13 his distance analysis; could you just briefly tell us, so we have  
14 these distance analyses side by side, what your views are about the  
15 distance analysis that he performed?

16      A     The problem about his distance analysis is highlighted by  
17 the table that I just showed showing the significant differences in  
18 the age of the viewers.

19           He doesn't appropriately include age in his statistical  
20 analysis, and so as a result he doesn't -- he comes up with a  
21 different result but he still finds that they're pretty far apart  
22 in his distance analysis, and that's excluding age as a key  
23 variable.

24      Q     Okay. And why is age a key variable?

25      A     Because we observe that there are significant differences

1 in age according to the demographic information and advertisers, as  
2 we know, like to buy demographics -- often, say, 25 to 54 year  
3 olds.

4 Q Now I don't want to go through the rest of your  
5 advertising analyses that are set out in your direct testimony, but  
6 can you just tell the Court in summary what conclusion you reached  
7 as a result of all the empirical work you did with respect to  
8 advertising?

9 A That there is not significant competition between GSN and  
10 WE with respect to advertisers.

11 Q Okay. Now, Mr. Orszag, I want to ask you, I'll move to  
12 a different topic, and ask you about the issue of how GSN and WE  
13 are carried by other MVPDs, other satellite and cable operators.

14 And have you previously offered any opinions before this  
15 Court with respect to the importance of carriage by other MVPDs,  
16 other cable operators who are not affiliated with the networks?

17 A Yes, I have.

18 Q And what was that opinion?

19 A That it's a very important factor to look at when one  
20 doesn't have the types of information one has here looking at  
21 comparable or peer MVPDs.

22 Q Okay. And have you considered the carriage of GSN by  
23 other MVPDs in this matter?

24 A Yes, I have.

25 Q And what conclusion do you reach?

1       A       In those other matters they involve Comcast, and as I  
2       think most folks in the room know, Comcast has roughly 23 million  
3       subscribers. I think it's lost a little, so it's now 22 million.  
4       Cablevision has 3 million subscribers. So I think it's fair to say  
5       Cablevision is not Comcast; it's a fraction of the size.

6               And so in the context the Comcast one would often look at  
7       the top MVPDs. For the purpose of Cablevision, it's useful to look  
8       at MVPDs that are both bigger and smaller, and what one observes is  
9       that there is a number of MVPDs who do not carry GSN at all.

10               carry GSN at all.               , at the time  
11       of the re-tiering didn't carry GSN at all, and               has  
12       carried GSN and then carried it on a tier. There are a number of  
13       MVPDs that carry GSN on a tier like Cablevision does, and then  
14       there are a number that carry it on a highly penetrated tier.

15               So one could sort of say that there are MVPDs that are  
16       plus or minus the same size as Cablevision that are not carrying  
17       GSN at all -- some that are carrying it on less penetrated tiers,  
18       and some carrying it on more penetrated tiers.

19               MR. COHEN: Now the last topic, I want to turn to what  
20       I'll just loosely --

21               JUDGE SIPPEL: Excuse me, but what does all of that mean  
22       to you?

23               THE WITNESS: That the decision of --

24               JUDGE SIPPEL: And when say "all of that," I mean all of  
25       that you last testified to in your answer.

1           THE WITNESS: Yes, okay. So one could think about well  
2 is there information that one could gather about how a non-  
3 vertically integrated cable company would carry GSN if it didn't  
4 have, say, its programming arm.

5           So how would Cablevision behave if it didn't have its  
6 programming arm? And here we can look at the profits to  
7 Cablevision directly because we actually have direct evidence of  
8 what happened.

9           In previous cases we didn't have that ability, so we had  
10 to infer it by looking at other cable companies. So what it tells  
11 me is that           is not vertically integrated, but it carries --  
12 it doesn't carry GSN at all.

13           So that's a rational business conduct decision for  
14 not to carry GSN; it's not vertically integrated. So  
15 their decision to not carry GSN was not motivated by an affiliation  
16 with some programmer.

17           So that suggests that Cablevision's decision to tier GSN  
18 is unlikely to have been motivated by its programming arm because  
19 they are acting actually better than, say,           .

20           JUDGE SIPPEL: Now wait a minute, whoa, you lost me  
21 there. You're saying           is not an integrated MVPD?

22           THE WITNESS: Right.

23           JUDGE SIPPEL: And so you go to           and it doesn't  
24 have -- it did not reach out and select GSN to meet its needs for  
25 programming?

1 THE WITNESS: Precisely.

2 JUDGE SIPPEL: Therefore what? Therefore --

3 THE WITNESS: They have found it profitable to not carry  
4 GSN. So a non-vertically integrated cable company that has about  
5 a million subscribers has found it profitable to not carry GSN.

6 JUDGE SIPPEL: All right. Now did reach out and  
7 bring in WE tv?

8 THE WITNESS: They do carry WE tv.

9 JUDGE SIPPEL: Okay. And so from that you are deducing  
10 that if -- well, if they did compete, why would they want to bring  
11 in both of them? Hypothetically, I am asking this. I mean if it  
12 was a foregone conclusion that they are competitors, you don't want  
13 to bring them in.

14 You mean because you're not integrated; you've got your  
15 needs being met with WE. Why do you want to double that with GSN on  
16 my hypothetical?

17 THE WITNESS: Well, I think the way to think about it is  
18 that they don't view that having GSN would attract or retain  
19 existing -- attract new subscribers or retain existing subscribers.

20 In evaluating the costs and benefits of deciding to carry  
21 GSN, they decided that it wasn't worth carrying GSN but it was  
22 worth carrying WE.

23 JUDGE SIPPEL: Well, you don't know how they made the  
24 decision with WE versus GSN. You don't know what factors went into  
25 it. But if they decided that look, here's two programmers that are

1 appealing to the same demos that we are trying to hit, and we flip  
2 a coin and WE tv comes out, so we put WE tv on but we don't want  
3 GSN because we're already getting what we want with WE tv.

4 THE WITNESS: But we know from the demographic  
5 information that they have very different demographics. So they're  
6 targeting different viewers based on all the analyses that we've  
7 just described.

8 So they wouldn't be attracting the same viewers by going  
9 for -- by carrying one and not the other. So --

10 JUDGE SIPPEL: Well okay. I was just going on a  
11 hypothetical that, you know, we didn't have to make that kind of an  
12 analysis.

13 They were satisfied that maybe they just -- all that they  
14 were doing was working on the back of napkin with a ballpark thing  
15 and they're sitting around there and they say -- because they're  
16 small guys, they are not Comcast - and they say well look,  
17 basically we've got what we want and we can be, well I don't want  
18 to get GSN, they're basically after the same one.

19 I wouldn't want to do that. That's going to be added  
20 cost to us. We have to pay those licensing fees and everything.

21 THE WITNESS: But you do view, I mean folks carry ESPN  
22 and NBC Sports Network and they carry channels that CNN and FOX  
23 News and MSNBC, so channels --

24 JUDGE SIPPEL: Well those are all things that you have to  
25 pay for. I mean ESPN and FOX Sports and all that kind of stuff you

1 have to pay an extra nickel for. It's not on your basic --

2 THE WITNESS: Oh, no, those are all on expanded -- for  
3 most providers those are all part of your expanded basic package,  
4 so those are included as part of --

5 JUDGE SIPPEL: Well it would be the same place that GSN  
6 would be, for example, you're saying?

7 THE WITNESS: That's what, GSN says that they should be  
8 on the expanded basic package and so that's, you observe if one  
9 looks at channel lineups lots of similar channels that compete  
10 significantly with each other for programming or advertisers.

11 JUDGE SIPPEL: Yes.

12 THE WITNESS: And so take ESPN and NBC Sports Network and  
13 FOX Sports Network, and they're all on the expanded basic tier.

14 JUDGE SIPPEL: Okay. All right, so you have WE tv on a  
15 basic expanded and you got GSN on basic expanded, you move one of  
16 them up because you want to, basically your argument is to save  
17 money.

18 Again, we're in, you know, we're in la-la land here. I  
19 mean this is all hypothetical stuff.

20 THE WITNESS: So the question is, is that, for the cable  
21 company, was it a profitable decision to do it for the cable  
22 division?

23 JUDGE SIPPEL: Well now I don't want to get into narrow  
24 of an assessment.

25 THE WITNESS: Good.

1 JUDGE SIPPEL: I'm just simply saying an executive  
2 decision has to be made, what am I going to do with this situation;  
3 we're \$x millions of in the hole with production costs.

4 THE WITNESS: Right.

5 JUDGE SIPPEL: Which one of these guys goes? I suppose  
6 they were saying that that --

7 THE WITNESS: Right.

8 JUDGE SIPPEL: And you'd pick the one that you think you  
9 think you'd save the most money on.

10 THE WITNESS: Well not necessarily. I think I want to  
11 change your framework a little bit.

12 JUDGE SIPPEL: Okay.

13 THE WITNESS: This is not the one you want to save the  
14 most money on; it's the one that you actually make the most profits  
15 by re-tiering it.

16 JUDGE SIPPEL: Which way? Profits on keeping one down  
17 here or profits on -- or moving it up and making it up up there, or  
18 both?

19 THE WITNESS: Either one.

20 JUDGE SIPPEL: So that would be the best possible world.

21 THE WITNESS: Because the businesses aren't in the world  
22 of just minimizing costs; they're in the business as a maximizing  
23 profits.

24 And so if you could -- by the way, the most expensive  
25 channel on every cable company is ESPN, I'm pretty sure.

1 JUDGE SIPPEL: I've heard people say that either as a  
2 complaint or as an observation.

3 THE WITNESS: I'm just going to use it as an observation.  
4 You would save a lot of money if you dropped ESPN from your  
5 programming lineup, but you would actually cost yourself a lot of  
6 business because -- I don't know about you, Your Honor, but I would  
7 switch MVPDs if I couldn't get ESPN because sports is an important  
8 part of my life.

9 JUDGE SIPPEL: Yes, sure.

10 THE WITNESS: And I think there are a lot of other people  
11 like me.

12 JUDGE SIPPEL: Yes.

13 THE WITNESS: So one has to look at the calculus of both  
14 the question of the benefits of carriage and the costs of carriage  
15 to determine the optimal level of carriage.

16 JUDGE SIPPEL: Okay. I think I do see where you're going  
17 on this. Okay, but it's got to --

18 (Simultaneous speaking)

19 MR. COHEN: That's exactly where I'm going next, Mr.  
20 Orszag.

21 JUDGE SIPPEL: Move on. He's yours. I'm giving him  
22 back.

23 MR. COHEN: Okay. I guess I'll take him.

24 JUDGE SIPPEL: Don't fight over me.

25 MR. COHEN: And so let's go to that cost benefit

1 analysis; let me leave MVPD carriage and other MVPDs aside for the  
2 moment. And so did you do an analysis of the cost and benefits of  
3 re-tiering GSN?

4 THE WITNESS: Yes, I did.

5 MR. COHEN: Okay. And could you walk the Court through  
6 what you looked at and what conclusions you drew?

7 THE WITNESS: There were three primary factors that I  
8 considered as part of my analysis. The first is the fact that when  
9 they re-tiered GSN, they saved directly per month in  
10 affiliate fees.

11 MR. COHEN: Okay.

12 THE WITNESS: So that is a certain savings to Cablevision  
13 from re-tiering GSN -- a benefit to the business.

14 JUDGE SIPPEL: Those are licensing fees?

15 THE WITNESS: Yes. Now one has to include, look at two  
16 other factors. There is another benefit to Cablevision from the  
17 re-tiering. By putting GSN on the sports tier, my empirical  
18 analysis shows that subscribers subscribe to the sports and  
19 entertainment tier.

20 JUDGE SIPPEL: What's that number again?

21 THE WITNESS: subscribers.

22  
23  
24 That's profitable for Cablevision. That increases  
25 Cablevision's profits. So that's on the plus side for Cablevision,

1 but now there is a potential negative.

2 MR. COHEN: Let me just stop you. So there are two  
3 pluses, right, there was the loss -- there was the reduction of  
4 license fees plus new revenue for people migrating to the sports  
5 and entertainment tier?

6 THE WITNESS: That is correct.

7 BY MR. COHEN:

8 Q Okay. What's on the other side of the ledger?

9 A The other side of the ledger is a company that re-tiers  
10 programming -- like re-tiering GSN -- risks that consumers will  
11 disconnect service and decide to go to another MVPD, like I said I  
12 would do if my MVPD didn't have ESPN.

13 So the question is: when they re-tiered GSN -- when  
14 Cablevision re-tiered GSN -- what happened to Cablevision  
15 subscribership? And I analyze that question empirically.

16 Q Okay. And is that set out in Table 22, the last table in  
17 your binder?

18 A The summary statistics are laid out in Table 22, and then  
19 there is an empirical econometric analysis that undergirds this as  
20 well.

21 Q Okay. So why don't you tell us a little bit - not too  
22 much detail -- about the econometric analysis that you performed  
23 with respect to -- and is churn what you mean by loss of  
24 subscribers?

25 A Yes, it is.

1 Q Okay. And do cable companies churn subscribers  
2 irrespective of deleting or adding?

3 A Yes, they do.

4 Q Okay. What you looked at specifically here was the  
5 effect of the GSN re-tiering on churn, right?

6 A Precisely.

7 Q Okay.

8 A So what this --

9 Q Tell us what you did.

10 A What this summarizes is one could look at the set top box  
11 data and look at the behavior of those viewers who watched a lot of  
12 GSN versus those viewers who watched less than an hour in the month  
13 of April of 2010 of GSN.

14 And what one finds is that the churn rate -- the  
15 disconnect from Cablevision rate -- was actually lower for the  
16 people who watch more GSN. So the people who watch more GSN were  
17 less likely to leave, according to this simple summary statistic.

18 I then measure this econometrically, and one finds that  
19 there is not a reliable estimate of the number of subscribers who  
20 disconnected from Cablevision, that is if not different from zero.

21 Q Okay. I have to ask you to be a little less of an  
22 economist on this last sentence. When you say there is no reliable  
23 estimate that's different than zero -- in plainer English if you  
24 could -- what does that mean with respect to your analysis?

25 A You can't include a cost to Cablevision as part of a cost

1 benefit analysis when one cannot reliably estimate what that cost  
2 would be or what that cost was.

3 And so since one cannot estimate the number of  
4 subscribers who disconnected from Cablevision reliably, one cannot  
5 then say well the number is X because that would just be  
6 speculation.

7 Q And when you say you cannot estimate it reliably do you  
8 mean that any number that comes out of the churn analysis that you  
9 did it is not statistically significant within recognized  
10 statistical tests of significance?

11 A Yes, it is. Yes, that's exactly what I'm saying.

12 Q Okay. Now as a result of these three pieces of the  
13 analysis -- foregone licensee fees, migration to the sports and  
14 entertainment tier, and what you find on churn -- what's your  
15 ultimate conclusion with respect to the profitability to  
16 Cablevision as a result of re-tiering?

17 A The evidence I have reviewed shows that the Cablevision  
18 cable division -- that's a tongue-tier - the Cablevision cable  
19 division benefitted from the re-tiering of WE. They saved money on  
20 the programming fees, they attracted subscribers to the S&E tier,  
21 and they didn't lose a significant number of subscribers.

22 Q Now Dr. Singer in his testimony does various analyses of  
23 this same issue, does he not?

24 A Yes, he does.

25 Q Okay. And I think one analysis he does he calls his

1 profit sacrifice test, which I think is asking the question that  
2 you've asked?

3 A Yes, it is.

4 Q Okay. And can you tell us what he finds and whether you  
5 agree or disagree with his conclusions with respect to the  
6 profitability of re-tiering GSN?

7 A I disagree with his conclusions for the following  
8 reasons. You start with he wants to exclude from the analysis, as  
9 best I can tell, the cost savings - the cost savings per  
10 month.

11 Even though his result is not statistically significant  
12 -- and I have issues with how he did the econometrics about churn,  
13 but I won't get into the esoteric issues - even though it's not  
14 statistically significant at a conventional level of significance  
15 he includes that cost in his model but then he adds  
16 subscribers on top of that.

17 He assumes that every single subscriber who received the  
18 would have disconnected and that  
19 Cablevision would have lost the margin on those subscribers  
20 forever.

21 There is no evidence that I am aware of that supports  
22 that. In fact, the evidence directly contradicts that. The people  
23 who subscribe to the sports tier were more likely than others to  
24 remain as Cablevision subscribers after the subsidy period was  
25 over.

1           And then finally he discounts the increase in sports tier  
2    subscribership because, again, it's an esoteric econometric issue.  
3    It's not a necessary component in my analysis, it's almost in  
4    addition, it's icing on the cake.

5           And then he includes a harm to good will which, again, is  
6    not appropriate here because it's not a loss to Cablevision. It's  
7    not a harm to Cablevision that economists measure, and it's also  
8    based on speculation in terms of the numbers of people who he  
9    claims were "harmed."

10       Q     Here's one question about what you just said, and you  
11    said that Dr. Singer's churn analysis is not statistically  
12    significant, right?

13       A     That is correct.

14       Q     Can you tell us why not?

15       A     Economists, if you look at say the judicial, I mean in  
16    the context of litigations if you look at the Judicial Center  
17    Manual on Econometrics or if you go to an economics journal, like  
18    the American Economic Review, which is the leading journal, what  
19    they will tend to show is a 99 percent significance is strongly  
20    significant, 95 percent is statistically significant -- and that's  
21    a conventional level that's used -- and 90 percent is weak  
22    significance.

23           In the American Economic Review those are the measures  
24    that you use for statistical significance. That's the standard in  
25    the industry. And Dr. Singer's analysis does not meet any of those

1 thresholds of statistical significance.

2 Q And is his churn analysis above the 10 percent confidence  
3 level?

4 A Yes, it is.

5 Q Okay. He also does something called a net profit  
6 sacrifice test, which is the cost of re-tiering WE. Have you  
7 examined his work on his net profit sacrifice test?

8 A Yes, I have.

9 Q Okay. And can you tell us what you found?

10 A Well Dr. Singer when he extrapolates from the experience  
11 at GSN to WE tv, which isn't appropriate for the reasons I've  
12 articulated, that there is not evidence of significant competition  
13 between the two networks, but then he actually changes his  
14 analysis.

15 He uses a different analysis for WE tv than he did for  
16 GSN; he imposes a constraint. And the difference between imposing  
17 that constraint, that you had to watch an hour of WE tv to be  
18 included in the analysis, changes his results completely.

19 And so if one just reran his model, his identical model  
20 that he did for GSN, you rerun it for WE and Wedding Central, one  
21 would find that there is roughly more churn with WE than  
22 GSN and there would be some churn for the dropping of Wedding  
23 Central as well.

24 Again, I don't think his model is appropriate because  
25 he's making a big leap of faith that you can extrapolate from the

1 experience of GSN to WE and WE has never been, there's not an  
2 experiment that I know of to test the tiering of WE and the effects  
3 of tiering WE.

4 So that's why I find it totally inappropriate to use in  
5 this context.

6 Q When you say there is no experiment with respect to the  
7 tiering of WE could you be a little more specific about what you  
8 mean in contrast with what we know about GSN?

9 A Well when one's doing an ex-post analysis, and that's  
10 what we're doing here, we are looking at what happened after the  
11 fact, one needs something to study, and so here we can study what  
12 happened to Cablevision subscribership when, for example, GSN was  
13 tiered.

14 One could not do that for WE because it wasn't tiered,  
15 and one can't look at another MVPD and study the effects from that  
16 other MVPD because I am not aware of an instance that one could do  
17 that, where there is an experiment that one could test, where one  
18 would have the data to test that WE was tiered such that you could  
19 analyze the impact of that tiering.

20 Q One last subject. I just want to ask you about one  
21 aspect of Dr. Singer's analysis on harm. He did an analysis of  
22 advertising in which he opined that regression, you know, opining  
23 that GSN lost, I think his number was a year in lost  
24 advertising, did you review that regression?

25 A Yes, I did.

1 Q And do you agree with the results of his regression or  
2 conclusions --

3 A No, I did not.

4 Q Why not?

5 A Well he's running his regression on one part of GSN's  
6 overall advertising, and I'll ignore the econometric issues, we'll  
7 just focus on sort of the real world issues. He's running it on  
8 advertising that represents roughly percent of GSN's advertised  
9 revenue.

10 If you just take his identical model and run it on all of  
11 GSN's advertising it would show that the re-tiering had no effect  
12 on advertising, and so that's included in my report that you could  
13 just take his analysis and rerun it for all advertising and you'd  
14 find no effect at all.

15 Q And why is it better to run this regression against all  
16 advertising as opposed to a portion?

17 A Because the effects you care about are what effect was  
18 there on the harm of, if there was any harm for GSN's overall  
19 advertising, not one component or the other.

20 MR. COHEN: Your Honor, I have no other questions for Mr.  
21 Orszag at the moment.

22 JUDGE SIPPEL: I just have one question; it's a  
23 clarification question. You had three tests for your cross benefit  
24 analysis on your testimony here and that was the savings of  
25 a month, and then the second one was GSN on the sports

1 tier and I got viewers on sports view.

2 THE WITNESS: Right.

3 JUDGE SIPPEL: It was new revenue, but was the new  
4 revenue?

5 THE WITNESS: The new revenue is roughly the margin  
6 profits are at least per month more for each of those  
7 subscribers. You've got to remember for of them,

8

9 But given that

10 if one looks at it over a  
11 long period of time this was a profitable piece for Cablevision's  
12 cable division. So you could think about this as a margin for  
13 subscribers

14 JUDGE SIPPEL: And you say it from a preschool period of  
15 time, what would that be? How long do you have to be doing that  
16 before your significant profits are --

17 THE WITNESS: Well the profits are what they are. They  
18 are just -- So in the month following say the subsidy being over it  
19 would times is the increase in profits.

20 JUDGE SIPPEL: Okay. How long was it,

21

22 THE WITNESS: , but I'm saying  
23 the month after,

24 JUDGE SIPPEL: Okay.

25 MR. COHEN: And in the first were there

1 profits with respect to

2 THE WITNESS: Yes, there were.

3

4 So that means by definition there was an increase in  
5 profits.

6 JUDGE SIPPEL: Did the sports tier have a big increase in  
7 viewership after the tiering?

8 THE WITNESS: Well the people who watched, and I include  
9 this in my report, too, I think just about everything's in here,  
10 the people who watched GSN before it was re-tiered continued to be  
11 heavy watchers of GSN after it was re-tiered.

12 So that would suggest there was an increase in viewership  
13 of the sports tier after it was re-tiered, and that's why, in part  
14 why it was a profitable decision for Cablevision.

15 JUDGE SIPPEL: Well, okay, so they did. They picked up  
16 the viewers, the GSN viewers, the sports tier, and then, of course,  
17 those viewers were lost down there by the basic, what was it the  
18 basic expanded tier, but my question really was more like: did Game  
19 Show being on the sports tier attract more new subscribers to the  
20 sports tier?

21 THE WITNESS: Yes.

22 JUDGE SIPPEL: Is there any testing for that?

23 THE WITNESS: Yes, I tested that empirically, and that's  
24 the That's the increase in sports tier subscribership due  
25 to the carriage of GSN.

1 JUDGE SIPPEL: So I got the impression that that was the  
2 amount that Game Show, GSN, took to the tier; they took  
3 viewers.

4 THE WITNESS: No, I'm sorry; let me try to explain this  
5 more precisely, if I may. When Game Show Network got put on the  
6 sports tier you would have to buy the sports tier for \$6.99.

7 JUDGE SIPPEL: Right.

8 THE WITNESS: And what I estimate econometrically is  
9 people decided to buy the sports tier for \$6.99 because of  
10 the tiering because GSN was now available on the sports tier.

11 During the relevant period in question, after GSN was  
12 tiered, sports tier subscribership increased by I think it was

13 but I disentangle what percentage of those people  
14 subscribes to the sports tier because they wanted sports say versus  
15 the number of people who wanted GSN.

16 And I could do that using the set top box data because I  
17 could look at the behavior of people who are heavy watchers of GSN,  
18 and those people were far more likely to subscribe to the sports  
19 tier than other people.

20 So if you think about it, you and I are sitting there and  
21 you didn't like GSN and I liked GSN, and you observed that I  
22 subscribed to the sports tier because I am a GSN watcher, I want  
23 it, and you subscribed to the sports tier because you wanted  
24 sports, my doesn't count you because you weren't a GSN  
25 watcher; it only counts me.

1           And so I'm trying to narrow -- focus very tightly on who  
2   subscribed to the sports tier because GSN was available on that  
3   sports tier and it comes up very strongly in the data that those  
4   people who liked GSN and watched it also bought the sports tier for  
5   \$6.99 and that increased the profits for Cablevision.

6           JUDGE SIPPEL: Well I still don't see, it still seems to  
7   me what you're doing is you're taking the GSN viewers on the basic  
8   expanded and they are the ones that stayed and the ones that were  
9   going to bail out were given

10  
11  
12          THE WITNESS: Right.

13          JUDGE SIPPEL: We don't know why, it could've been  
14   before, because they wanted to stay with GSN or it could be because  
15   they, well we're going to pick up sports channels anyway.

16          THE WITNESS: No. No, that's what I'm disentangling.

17          JUDGE SIPPEL: How do you disentangle that?

18          THE WITNESS: So what I can do is I can look at, and this  
19   is included, if I can find the table in here we can walk through  
20   it, but --

21          JUDGE SIPPEL: Well that's not why we're here --

22          THE WITNESS: So think about it this way. I think the  
23   simplest way to think about it is I can look at two subscribers,  
24   okay, let's just simply the world into two subscribers.

25          JUDGE SIPPEL: Yes.

1 THE WITNESS: One subscriber who never watched GSN in  
2 April 2010, right before it was re-tiered, and one subscriber who  
3 watched a lot of GSN, if they both subscribe to a sports tier I  
4 would be over counting if said GSN's re-tiering was the cause for  
5 two people subscribing to the sports tier because one never watched  
6 GSN.

7 What I do as a matter of statistics and econometrics is  
8 I show that the probability of subscribing to the sports tier was  
9 directly related to how much you watched GSN, so I can  
10 differentiate between you maybe who didn't watch GSN and me who  
11 did.

12 So even though there was a person increase in the  
13 sports tier, of them -- or roughly half -- subscribed  
14 because, directly because GSN was now available on the sports tier.

15 JUDGE SIPPEL: That's your economic conclusion?

16 THE WITNESS: That's my -- well it's the empirical  
17 analysis that's embedded in my report.

18 JUDGE SIPPEL: All right.

19 MR. PHILLIPS: Are you done?

20 MR. COHEN: Yes, I am.

21 MR. PHILLIPS: I ask that Mr. Phillips may examine.

22 JUDGE SIPPEL: We're both done.

23 MR. PHILLIPS: May I, Your Honor?

24 JUDGE SIPPEL: Yes, you certainly may, but I'm not  
25 suggesting a break for me, but does anybody --

1 MR. COHEN: I wouldn't mind ten minutes, Your Honor,  
2 before we start if we're going to go awhile with this.

3 JUDGE SIPPEL: Okay.

4 MR. PHILLIPS: I don't think it's that long, but I've got  
5 some questions.

6 JUDGE SIPPEL: He's a man from New York, you can't beat  
7 that. Fifteen minutes for the 10-minute break.

8 (Whereupon, the above-entitled matter went off the record  
9 at 10:47 a.m. and resumed at 11:01 a.m.)

10 JUDGE SIPPEL: The witness has been tendered for cross  
11 examination, Mr. Phillips.

12 MR. PHILLIPS: Thank you, Your Honor. Good morning, Mr.  
13 Orszag.

14 MR. ORSZAG: Good morning, Mr. Phillips. It's nice to  
15 see you again.

16 MR. PHILLIPS: It's nice to see you as well. How are you  
17 doing?

18 MR. ORSZAG: I'm doing pretty well.

19 MR. PHILLIPS: Oh, that's very good. I want to make sure  
20 I understand -

21 JUDGE SIPPEL: You sound like old friends.

22 MR. PHILLIPS: You know, Your Honor, we have spent a lot  
23 of time together.

24 JUDGE SIPPEL: That's not the same thing I said though.

25 MR. PHILLIPS: I think I can speak for both of us that we

1 both have enough respect for what each of us do.

2 MR. ORSZAG: Sir, I even know where he grew up. That's  
3 how deep we've gotten in here, you know.

4 JUDGE SIPPEL: Well, that's a - okay, that's a plus.  
5 That's a factor, but I've said enough.

6 MR. PHILLIPS: That probably says that I'm too open with  
7 my life.

8 JUDGE SIPPEL: Or you're too well known.

9 CROSS EXAMINATION

10 BY MR. PHILLIPS:

11 Q Mr. Orszag, I want to start off by just making sure that  
12 I know what we are talking about and what we're not talking about.  
13 You looked at - you're here and giving an opinion about how  
14 Cablevision carried GSN. Is that fair?

15 A Well, yes, and I would say the economic effects of the  
16 carriage of GSN.

17 Q You're not here, and you haven't examined Cablevision's  
18 decisions in carriage on WE tv, correct?

19 A I have not done an affirmative analysis of that. I've  
20 critiqued Dr. Singer's analysis of that.

21 Q And you're not here to talk about decisions that  
22 Cablevision made in the carriage of Wedding Central?

23 A Other than the observation that the carriage was  
24 terminated, no, I'm not.

25 Q And you don't offer any opinion here about whether

1 Cablevision discriminated against GSN for purposes of Section 616,  
2 do you, sir?

3 A Discrimination, in my opinion, would be a legal  
4 determination. All I can analyze are the economic questions that  
5 I outlined in my direct testimony.

6 Q And you don't offer an opinion about whether from an  
7 economic lens Cablevision discriminated or did not discriminate  
8 against GSN, correct, sir?

9 A Again, I'd give the same answer I just gave that I'm  
10 looking at questions. Was there significant competition between  
11 the networks? Was it a profitable decision within the four corners  
12 of the cable division at Cablevision to retier GSN? And was there  
13 an incentive to engage in this behavior? And was there an  
14 unreasonable restraint in the ability for GSN to compete? Those  
15 are the questions that I'm answering.

16 Q Now, just to be clear, Mr. Orszag, because this is one of  
17 those places it's going to make a big difference as to how quickly  
18 we can get out of here, my question is you're not offering an  
19 opinion, an ultimate opinion upon whether or not from an economic  
20 perspective Cablevision discriminated against GSN, are you?

21 A I'm offering my opinion that there's not significant  
22 competition between the networks, so there's no incentive to engage  
23 in the alleged conduct.

24 Q Okay, now I understand what you are offering, and I just  
25 want a yes or no on mine if I could. You're not offering an

1 opinion on whether Cablevision discriminated against GSN from an  
2 economic perspective, are you, sir?

3 A Well, this is maybe where we are getting cross each  
4 other, sir, so let me try to - discrimination is a legal standard.  
5 I'm looking at it from an economic question. I'm answering the  
6 economic questions I've outlined, and that's what I'm doing.

7 Q Okay, and those economic questions as you've outlined do  
8 not include from an economic perspective whether or not Cablevision  
9 discriminated against GSN. Is that fair, sir?

10 A This is - I'm only answering the economic questions that  
11 I'm answering which go to the heart of the question of whether they  
12 were treated differently for purposes of benefitting the  
13 programming arm, and so those go directly to the economic  
14 questions. I can obviously agree I'm not making any legal  
15 determination here at all.

16 Q Discrimination has no meaning as an economic term, sir?  
17 Is that your testimony?

18 A Well, economic discrimination can be different from legal  
19 discrimination. That's what I want to differentiate. But my -  
20 what - the key components of economic discrimination is, are two  
21 products identical or are they similar? Do they compete? Are they  
22 operating in the same place in the product space? And my answer to  
23 that is they are not.

24 Q Let me try one more time, Mr. Orszag, really, and just  
25 tell me yes, no, or just say, "I can't answer it yes or no," and

1 I'll go on, okay? From an economic perspective, are you offering  
2 an opinion that Cablevision did or did not discriminate against  
3 GSN, yes, or no, or you can't say?

4 A What I would say is from an economic perspective, the  
5 economic standard, they are not - they did not discriminate because  
6 the programs are not competitive with each other, and it was a  
7 rational conduct for the cable arm of Cablevision to engage in this  
8 conduct.

9 Q Now, you're also stated I believe in your opinion that  
10 you believe that Cablevision's actions are consistent with sound  
11 business judgment, correct, sir?

12 A That is correct.

13 MR. PHILLIPS: Now, this isn't your first time to examine  
14 -

15 JUDGE SIPPEL: But isn't there another test? Isn't it a  
16 benefit or a loss to consumers? Isn't that also in your equation?  
17 How can you say discrimination in the economic sense without taking  
18 consumers into account?

19 MR. ORSZAG: As an economist, I read the language of the  
20 law because I have to look at this with an economic lens, that  
21 there are at least three parts. There could be a fourth part, but  
22 that's then a legal question which is - the first question is are  
23 they similarly situated? As an economist I read that as is there  
24 significant competition between the networks? The second question  
25 -

1 JUDGE SIPPEL: From an economic standpoint.

2 MR. ORSZAG: From an economic perspective. Everything is  
3 from an economic perspective. The second question is was this  
4 business conduct consistent with being, in essence, not having  
5 affiliated programming? Would a non-vertically integrated cable  
6 company have engaged in the same type of behavior? If it's  
7 profitable for the cable division, the answer would be yes.

8 The third step is even if this had occurred, even if they  
9 were similarly situated and it was profitable for the cable  
10 division, if it doesn't have an unreasonable restraint in the  
11 ability of the programming arm to compete, then that's not a harm  
12 that would, as an economist reading this language, it doesn't meet  
13 that standard.

14 There is then the potential for the question of even if  
15 you have an unreasonable restraint in the ability of the program to  
16 compete, does there have to be a harm to consumers? That's never  
17 a question that I've actually answered as part of - neither Dr.  
18 Singer nor I have ever answered whether that's a necessary  
19 component of the economic analysis because I've never gotten to  
20 that step because, as I said here, the evidence shows that they  
21 don't compete significantly.

22 It was rational and there was no harm to their ability to  
23 complete, so I never needed to get to the fourth - whether there is  
24 a fourth prong. And I'd leave it to the lawyers about whether  
25 that's a necessary component, or obviously, Your Honor.

1 JUDGE SIPPEL: Well, no, I just never heard of an  
2 economist coming up with an analysis under this - you know, ever  
3 since the Chicago thinking took over in the early 80s that it's  
4 always consumers, consumers, consumers. We don't care about  
5 competitors.

6 MR. ORSZAG: Precisely, but that's why the unreasonable  
7 restraint and the ability to compete fairly, if there was no harm  
8 in their ability to compete, then you could - then that's - you  
9 could sort of jump to the point that there's no harm to consumers.

10 JUDGE SIPPEL: You can jump to that?

11 MR. ORSZAG: Because competition at its heart, this is  
12 what I spend my life doing in many different matters, is about  
13 protecting consumer interests, and when firms compete, that is to  
14 the consumers' benefit.

15 So when you take out a potential competitor, that would  
16 be equivalent to a harm to consumers potentially because without  
17 that competitor present, consumers would either see higher prices  
18 or lower quality potentially.

19 And so one could sort of say all of our analysis is about  
20 consumers because in the end that's what we do care about, whether  
21 they're protected and whether you have lost a competitor as a  
22 result of this action or not.

23 JUDGE SIPPEL: Well, you're talking about also fewer  
24 choices at the same price. If they're being deprived fewer choices  
25 at the same price, if they have to pay more for the same choice,

1 that's not a good thing for consumers.

2 MR. ORSZAG: Well -

3 JUDGE SIPPEL: Do you agree with that as a general  
4 proposition whether it's economic or not? I think I'm a fairly  
5 good speaker of economicese.

6 MR. ORSZAG: Well, let me - the answer is as a general  
7 proposition, yes.

8 JUDGE SIPPEL: Okay.

9 MR. ORSZAG: But, take this issue as an example, if  
10 they're - I'm just - I'll use a hypothetical to help show the  
11 point. If there are two million viewers who did not subscribe to  
12 Cablevision who did not watch GSN ever, and there are 500,000 who  
13 did watch it - I'm just - there aren't actual numbers. They're a  
14 hypothetical.

15 JUDGE SIPPEL: I know, I hear you.

16 MR. ORSZAG: If you put GSN on the sports tier, the  
17 500,000 people who watched it are worse off, but the two million  
18 people who didn't watch it are now better off because the cost  
19 structure of the expanded basic tier is lower. And so that next  
20 time Cablevision goes to change prices, economic theory would say  
21 they would change it less than - they would increase it less than  
22 they previously would have.

23 So there would be a smaller price increase so that two  
24 million people would be better off, and better off by the amount  
25 the prices didn't go up, and the 500,000 people would be worse off.

1 And so, the net effect to consumer welfare would depend upon the  
2 relative magnitudes of each of those effects.

3 JUDGE SIPPEL: But you're assuming that Cablevision would  
4 not want to be maximizing profits.

5 MR. ORSZAG: No, I'm assuming they max - I always assume  
6 they maximize profits. I assume Cablevision is rational.

7 JUDGE SIPPEL: Well, if they maximize their profits, why  
8 are they going to take a - if they've got two choices, move the  
9 prices up a smidge or move the prices up two smidges, why don't  
10 they go for the two smidges? The viewers don't have any choice.

11 MR. ORSZAG: Well, but viewers do have a choice now.

12 JUDGE SIPPEL: Or they can walk. Yeah, they could walk.

13 MR. ORSZAG: Right, and that's what the constraint is.  
14 So if Cablevision went and increased their prices, let's just say  
15 to \$200, that would be a very good thing for DIRECTV, Dish Network,  
16 and Verizon, which is located in many of the different areas where  
17 Cablevision offers service.

18 JUDGE SIPPEL: All right, so we agree with that.

19 MR. ORSZAG: So what protects the knocking up of prices  
20 is the fact that both the consumers are - have an income  
21 constraint. They only have so much income to spend on cable tv.

22 JUDGE SIPPEL: Yeah.

23 MR. ORSZAG: But also that there are competitive options  
24 out there right now, and so that people can go to those, or people  
25 today can disconnect and just get Netflix, and Hulu, and these

1 other services that are quote, over the top.

2 JUDGE SIPPEL: Right, but having said all of that, you're  
3 still left with the proposition that they're going to have to pay  
4 more. Let's say in January of 2012, they were paying whatever it  
5 cost to be on the cable, on the basic plus, and then in February or  
6 March, all of a sudden they've got to pay the extra for being on a  
7 sports channel because the program that they like is on a sports  
8 channel. How can they be better off? How can those consumers be  
9 better off?

10 MR. ORSZAG: Well, some people would be pay more and they  
11 could be worse off, and some people would pay less and be better  
12 off.

13 JUDGE SIPPEL: But what about the people who pay more?  
14 They're worse off.

15 MR. ORSZAG: Well, but whenever one has - in economic  
16 terms it's called price discrimination. So it's the idea that I  
17 can target my price increase to the people who are most willing to  
18 pay.

19 So for example, if you go to an airline and you go to buy  
20 a business class seat or a refundable ticket, those are more likely  
21 to be business customers who don't care about how - don't care less  
22 about how much they're paying. They get a higher price than more  
23 price sensitive leisure travelers.

24 So what the airline is doing for the identical seat is  
25 they're trying to target the people who are more willing to pay

1 versus the people who are less willing to pay. You see this in all  
2 kinds of different areas where there's differential pricing between  
3 the people who really need something or really want something and  
4 the people who want it less.

5 And so this is a profit maximizing decision that  
6 businesses make all the time to have differential pricing for  
7 different groups of consumers. And if they can target the price at  
8 the people who are willing to pay, they do that.

9 Now translating this into this case, they're targeting  
10 the price to the people who like GSN because those people who like  
11 GSN really did like it a lot and are willing to pay \$6.00 a month  
12 to get access to it.

13 JUDGE SIPPEL: Right, but they can't go to a different -  
14 can they go to a different channel? Can they go to a different  
15 MVPD -

16 MR. ORSZAG: Yes -

17 JUDGE SIPPEL: - to get it cheaper?

18 MR. ORSZAG: Well, they would get it differently. A  
19 customer in Cablevision's footprint could have disconnected from  
20 Cablevision and subscribed to DIRECTV which offers GSN. They could  
21 have disconnected and -

22 JUDGE SIPPEL: Wait a minute, offers GSN on what tier?

23 MR. ORSZAG: Sitting here today, I forget the tier, the  
24 packages that - I think it's their second highest tier for DIRECTV,  
25 but I may be mistaken on that. I'm sure somebody in the room may

1 know, but I think it's their second highest tier. You could also  
2 get it from Verizon or you could get it from DISH Network, so the  
3 consumer would have a choice.

4 JUDGE SIPPEL: You don't know what its cost is going to  
5 be though?

6 MR. ORSZAG: I haven't done that analysis, no.

7 JUDGE SIPPEL: All right, so now it's not fair to ask the  
8 question then. Okay, I'll tell you right now, I mean, I'm just a  
9 little bit - I'll tell you - well, it's just, see there was, to use  
10 your characterization of noise, there was a noisy dissent in the  
11 Tennis Channel decision by Judge Kavanaugh, and he was talking  
12 about he wants to put all this into the analysis that the Federal  
13 Trade Commission would do, let's say, in a typical - I don't know  
14 if it would be a Clayton 5 situation or a Sherman Act situation,  
15 Clayton 5, I guess, whatever. Anyway, you know what I'm saying.

16 MR. ORSZAG: Yes.

17 JUDGE SIPPEL: And so things seem to be maybe going in  
18 that direction, and I'm just wondering why you could leave off  
19 consumers in your analysis? I know you haven't. You made your  
20 observation and you made your analysis, so I'm going to pass on  
21 that. But I'm saying it's just kind of a - to me, it's an  
22 interesting point, and maybe nothing else. Mr. Phillips, I'm  
23 sorry.

24 MR. PHILLIPS: No problem, Your Honor. I want to pick up  
25 on something you were talking about, Your Honor.

1 BY MR. PHILLIPS:

2 Q Mr. Orszag, you said you've never gotten to that point in  
3 the analysis where you've had to consider harm to the consumer.  
4 Did I hear that right?

5 A In one of these cases.

6 Q Right, and in one of these cases means you've looked at  
7 these kinds of cases several times, sir, correct?

8 A Yes, and I've looked at issues of carriage in other  
9 contexts as well.

10 Q And in looking at these kinds of cases, and - I think in  
11 this case we know what you found, that there's no evidence in your  
12 view of discrimination, if I may just short form it. In the Tennis  
13 Channel case, you looked at that as well, correct, sir?

14 A That is correct.

15 Q And in that case, you also found that - no evidence of  
16 discrimination, correct, sir?

17 A I'd go to my framework if you don't mind, but if you want  
18 to short circuit it the way you described it, that's fine. I  
19 focused in that case on the carriage decision and did that  
20 unreasonably restrain the ability of the Tennis Channel to compete,  
21 so, yes.

22 Q And you also found in that case that Comcast had acted  
23 consistently with sound business judgment, correct, sir?

24 A That is correct.

25 Q And you disagreed, in fact, with Judge Sippel's findings

1 in that case, correct, sir?

2 A My analysis would not be consistent with that. That is  
3 correct.

4 Q And also it was inconsistent with the FCC findings in  
5 that case, correct, sir?

6 A That is correct.

7 Q Okay, and in the MASN, the Comcast case, you also looked  
8 at the question of discrimination in that case also, sir, did you  
9 not?

10 A That is correct.

11 Q And in that case you also found that Comcast had an  
12 adequate deficiency justification, correct, sir?

13 A To short circuit things I will agree to that, although  
14 I'd change your words.

15 Q Okay, you also found that there was no discrimination at  
16 the end of the day there, correct, sir?

17 A In my analysis I wasn't analyzing discrimination from a  
18 legal perspective, but we can short circuit and say yes, I agree.

19 Q So, sir, more broadly, have you ever found discrimination  
20 by a vertically integrated cable operator against a similarly  
21 situated but unaffiliated network ever?

22 A From the network perspective, no, but from the  
23 perspective of an MVPD, yes.

24 Q Well, you're talking about the DIRECTV case, correct,  
25 sir?

1       A       It was DIRECTV and EchoStar about the carriage of Comcast  
2 Sportsnet, and that the way they carried in Philadelphia is a  
3 potential harm to consumers and competition.

4       Q       Okay, that was a program access case, wasn't it, sir?

5       A       That was a program access case.

6       Q       It was between two MVPDs, correct, sir?

7       A       That is correct.

8       Q       It didn't involve an unaffiliated network. It wasn't  
9 brought on behalf of an unaffiliated network, correct, sir?

10      A       No, but it was about the carriage of an affiliated  
11 network by Comcast, that it was using a loophole in the regulations  
12 in a way that was harmful to consumers.

13      Q       I'm sorry, sir, just to make sure, the question to - the  
14 answer to my question of have you ever found discrimination by a  
15 vertically integrated cable operator against a similarly situated  
16 unaffiliated network, the answer to that question is no, correct,  
17 sir?

18      A       In the times that I've looked at it, I have not found  
19 that. That is correct.

20           MR. PHILLIPS: Thank you, sir. So, I want to go to  
21 similarly situated, that element of the tests we're seeing, and  
22 just to make sure I understand it. I'll give you a frame of  
23 reference. As I understand it - sorry, I almost got off my  
24 two-page outline, Your Honor. As I understand it -

25           MR. COHEN: I was wondering about all that paper.

1 JUDGE SIPPEL: I'm always afraid of people with a little  
2 notebook.

3 MR. PHILLIPS: You know, Your Honor, I carry my whole  
4 life in here. It's very handy. It lets me know what I've been  
5 doing.

6 JUDGE SIPPEL: I could make an observation about that,  
7 but I'm not going to.

8 MR. PHILLIPS: I think I'm -

9 JUDGE SIPPEL: It's the size of the notebook.

10 BY MR. PHILLIPS:

11 Q Sir, when you look to determine similarly situated, you  
12 look at whether or not the networks are engaged in significant  
13 competition, correct, sir?

14 A That is correct.

15 Q And you found in this case that you don't find  
16 significant competition between GSN and either WE or Wedding  
17 Central, correct, sir?

18 A That is correct.

19 Q Now, sir, you can't identify any network, or you haven't  
20 identified any network that was in significant competition with WE  
21 as of February 2011 when the tiering occurred, correct, sir?

22 A It's not an analysis that I've undertaken as part of my  
23 work here. I've only focused on the question of whether there was  
24 significant competition between WE and GSN.

25 Q And you haven't looked and studied whether or not there

1 was any significant - to determine what the significant competitors  
2 were to GSN in February 2011 other than looking at WE and Wedding  
3 Central, correct, sir?

4 A Correct, I was looking at the question of significant  
5 competition between the Cablevision affiliated networks and GSN,  
6 not the question of competition with any other network.

7 Q And you would - so you've really only looked at these  
8 three networks in competing with each other, and you can't really  
9 offer an opinion on who else they compete with as you sit here,  
10 correct, sir?

11 A It's not an analysis I've undertaken. I think all of the  
12 data analyses that I have in here, one could go back and relook at  
13 that question, but it's not the purpose or the focus of my  
14 testimony.

15 Q Right, and it's not what you've done into your testimony  
16 today, correct, sir?

17 A No, my focus is on the questions that I have answered as  
18 part of my direct testimony which I have described.

19 Q Now, GSN's competitive set, you would agree with me,  
20 would not include Tennis Channel, correct, sir?

21 A That's not a question I've analyzed, so I don't know  
22 sitting here today whether that's in fact not a competitive option.

23 Q Do you have a view as to whether GSN's competitive set  
24 includes sports channels?

25 A It's, again, not a question I've analyzed as part of my

1 analysis, so I have no view one way or the other.

2 Q Being positioned next to networks in the same genre can  
3 help drive viewership, correct, sir? That's the phenomenon of  
4 neighborhooding?

5 A It can have some effect on viewership, yes.

6 Q And being positioned next to popular networks can have an  
7 effect on viewership, correct, sir?

8 A It can have some effect. I agree with that, yes.

9 Q And so GSN is now distributed on a sports tier. Are  
10 there any networks that you're aware of sitting here that are not  
11 sports channels on that tier?

12 A Sitting here today, I don't have a list of all the  
13 channels that are on the sports tier, so I haven't analyzed the  
14 genre of each of those channels.

15 Q Now, again, you look at - to determine whether or not two  
16 networks are significant competitors, you look at whether or not  
17 they can substitute, correct, sir?

18 A That's part of my analysis, yes.

19 Q And competition, I take it you'll agree with me, is a  
20 relative concept?

21 A Or it can be both an absolute and a relative. It depends  
22 on the question you're seeking to answer.

23 Q Well, but I believe, sir, that you know, that there's  
24 various degrees of competition that you've testified today. You  
25 answered these questions for me, correct, sir?

1       A       Well, it depends on the question, but yes, you can be the  
2       closest competitor. You can be the second closest competitor, or  
3       you can be a very distant or an insignificant competitor.

4       Q       And aren't all networks to some extent substitutes to  
5       some degree?

6       A       I mean, by the same token, dinner in Washington D.C. is  
7       a substitute for dinner in London, so to some degree, very minor  
8       degree, one could say yes. But the question is, is it significant?

9       Q       Now, the things that you look at to determine close  
10      substitutes are price and quality, sir, is that fair?

11      A       Those are byproducts of actions of viewers that would be  
12      affected by competition.

13      Q       I believe that from our prior conversations you  
14      identified price, quality, and output. Does that sound right to  
15      you, sir?

16      A       I like that list, yes.

17      Q       Okay, now in this instance, you don't look at quality, do  
18      you, to see if there's competition between GSN and the affiliated  
19      networks, correct?

20      A       Well, I do in some of my analyses examine questions of  
21      programming expenditures which is a measure of quality, so I can't  
22      say I haven't done any analysis with regard to key questions of  
23      quality. But in terms of my analysis of the direct tests,  
24      switching viewer overlap, I would agree. Those are not measuring  
25      quality. They're measuring actual viewer behavior in determining

1 how consumers view the closeness of two channels.

2 Q And you also haven't looked at questions of output in  
3 your analysis here, have you, sir?

4 A I can't agree to that because again, I have all kinds of  
5 analyses that go directly to the question of output. And so, those  
6 are - and output is measurement. Viewership is a measure of  
7 output.

8 Q Okay.

9 A It's - so all of what I'm doing is about the question of  
10 how many units are you attracting, that is how many eyeballs.

11 Q Well, so let's look at some particular things you looked  
12 at, so I'm going to take advertisers for a second. Now, at one  
13 point you looked at and compare advertising rates, correct, sir?

14 A That is correct.

15 Q And your opinion is that significant competition for  
16 advertisers would require that WE tv's advertising rates would face  
17 pricing constraints from GSN, correct, sir?

18 A If they were significant competitors, GSN would impose a  
19 pricing constraint on WE tv's advertising rates.

20 Q And you believe that the level of competition for  
21 advertisers in this case is not indicative of significant  
22 competition between GSN and WE tv, correct, sir?

23 A It makes it very unlikely, yes.

24 Q And indeed you've said that WE tv's and GSN's small  
25 shares of total industry advertising suggests that GSN advertising

1 is unlikely to provide a significant constraint on WE's advertising  
2 prices, correct, sir?

3 A That is correct.

4 Q You concede however though that two small networks with  
5 negligible advertising shares could nonetheless compete for  
6 advertising, correct, sir?

7 A As a matter of economic theory, that is possible, yes.

8 Q And there would be no price effect in that scenario,  
9 correct, sir?

10 A That is not true. There would be a price effect.

11 Q There would be. So let's say - let's take ESPN for  
12 example. You talked a few minutes ago off the record about how it  
13 was your understanding it's the most expensive network, correct,  
14 sir?

15 A That is correct.

16 Q And I assume from that it probably has very high  
17 advertising rates, correct, sir?

18 A Well, I actually have the advertising rate data in here  
19 and I believe it is the highest. Table 19 includes it and it's  
20 quite significantly the highest advertising rates according to  
21 Kagan.

22 Q And NFL Network also advertises, correct, sir?

23 A Presumably it does, yes.

24 Q And do you know what the NFL advertising rates are in  
25 comparison to ESPN, NFL Network being near and dear to my heart,

1 sir?

2 A Yes, I do. It's on that table as well.

3 Q Okay, Table 19, let's take a look at it.

4 A It's Page 98 for anybody who's looking for it.

5 Q Thank you. So in this instance you have ESPN as number  
6 one and NFL Network as number 18. Do you see that, sir?

7 A Yes, I do.

8 Q But you would agree that NFL Network competes with ESPN,  
9 would you not, sir, for advertising?

10 A Presumably when ESPN is showing football, and NFL Network  
11 is showing original football, they may be a competitive option for  
12 advertisers. It's not a question I've examined. So these  
13 advertising rates, you'd want to compare the advertising rates  
14 during those two moments, those two programs.

15 Q And as I see it, the ESPN rate is more than double the  
16 NFL Network rate. Is that fair, sir, according to Kagan?

17 A But again, ESPN has a lot more original content than the  
18 NFL Network, so the average rate may not reveal what's truly  
19 happening with regard to advertising.

20 Q Indeed, and the ESPN rate for football advertising could  
21 be even higher than is reported here, correct, sir?

22 A It could be higher or lower. It's not something I have  
23 data to analyze.

24 Q Let's talk about your direct test for a second. Now, as  
25 I understand your direct test, you were looking to see where GSN

1 viewers go when GSN is not available to you, correct, sir?

2 A That is correct.

3 Q So you look at - your direct test looks at where viewers  
4 go from the GSN perspective, is that fair?

5 A For the question of that, it says, "Where does those  
6 viewers end up?" And then I go further to ask the question of what  
7 the effect is on each of the channels increase in viewership  
8 because that's then a relevant question as well.

9 Q Right, but you're looking at it from GSN's perspective  
10 when you performed the direct test, correct, sir?

11 A Well, in the end, I'm looking at it from WE's perspective  
12 with what share - what's the impact on its overall viewership?

13 Q But the reason you're looking at where the GSN's viewers  
14 go, the perspective of where the GSN viewers go is because the  
15 network business is in the business of monetizing eyeballs so to  
16 speak, isn't it, sir?

17 A That's part of what they do, yes.

18 Q Yeah, and so the more eyes you get on a network, the more  
19 money it's worth to you, correct, sir?

20 A Not necessarily because there are two sides to this  
21 equation because there's also the question of subscriber fees or  
22 license fees, so it's not as simple as you just articulated it.

23 Q All of the things being equal, sir, you don't think that  
24 a network wants more eyes than less eyes?

25 A True, all things being equal, but you see a channel like

1 HBO which is very profitable being a narrow channel with relatively  
2 low subscribership, whereas you have a channel like ESPN that has  
3 very high subscribership and is very profitable as well, so there's  
4 two different strategies that people can utilize.

5 So with your caveat about ceteris paribus, all the things  
6 being equal, I can agree to it that more viewers is better because  
7 you can get advertising, but there's a balancing act here.

8 Q You're not suggesting, Mr. Orszag, that HBO doesn't want  
9 more viewers, are you?

10 A No, they do, but they also want high subscription fees,  
11 and that's important to them as well.

12 Q Now, when you - if there were significant competition  
13 between GSN and WE, the retiering of GSN, you would expect to find  
14 a significant increase in the viewership of WE, correct, sir?

15 A I would expect it to be both statistically significant  
16 and economically significant, yes.

17 Q And the viewership lift that you found was not  
18 statistically significant in your view?

19 A It was not statistically significant. That 1.4 seconds  
20 was neither statistically significant nor economically significant.

21 Q And Dr. Singer found a two percent view after he did some  
22 modifications to your test, correct, sir? Is that your  
23 understanding?

24 A That is correct. He made some inappropriate changes, but  
25 he did make those changes and he found two percent effect.

1 Q So let me just try to understand your direct test here  
2 for a second. You took on the one hand a control group, correct,  
3 sir?

4 A That is correct.

5 Q And you compared it to a treatment group, correct, sir?

6 A That is correct.

7 Q And the control group consisted of all of those people  
8 who kept GSN, correct, sir?

9 A That is correct.

10 Q And so that would also include the people who called up  
11 and complained and were very upset about the tiering and  
correct, sir?

13 A That is correct.

14 Q So that group would include all of the GSN loyalists  
15 we'll call it?

16 A That would include people who like GSN, yes.

17 Q All right, and so that's the group that you're going to  
18 compare to, correct, sir?

19 A That is correct.

20 Q All right, now the treatment group, the treatment group  
21 is the group of people who lost GSN, correct, sir?

22 A That is correct.

23 Q So they're people who

?

25 A That's - well, by - they didn't go to the sports tier, so

1 they didn't lose access to GSN.

2 Q So that's the group that really you could say includes  
3 people that don't care as much about GSN, correct, sir?

4 A There are some people who didn't care about GSN, and  
5 there are some people in that group who cared a lot about GSN, but  
6 not enough to purchase the sports tier.

7 Q Right, but these are the people - so you've got the  
8 control group which as we said has all the GSN loyalists, the  
9 people who called up and really raised hell about it,  
10 , and then you're comparing the movement by looking  
11 at a group that doesn't have those people in it. Was that the  
12 test, sir?

13 A No, you're misdescribing it. You have the correct  
14 treatment and control groups, but then what one does is one looks  
15 at viewers who were - say, let's take two viewers, one who watched  
16 an hour of WE tv and an hour of GSN in the pre-period, and another  
17 who watched an hour of GSN and an hour of WE tv in the pre-period.

18 One of them loses access to GSN, same viewership. You're  
19 controlling for the viewership levels. One loses access to GSN.  
20 Do those people watch more WE? And the answer is not in any  
21 significant amount.

22 Q So -

23 A And so I'm - just if I may because you're asking -

24 JUDGE SIPPEL: Let him finish.

25 MR. ORSZAG: Me or him?

1 JUDGE SIPPEL: You, go ahead.

2 MR. ORSZAG: What I'm looking at is you're correct about  
3 the treatment of control groups, but then within the treatment and  
4 control groups you're comparing people with similar viewership  
5 patterns. You're controlling for viewership patterns.

6 BY MR. PHILLIPS:

7 Q Sir, let me just break this down more simply. There are  
8 people who called, complained, and got the subsidy because  
9 they really wanted GSN, correct, sir?

10 A There are people who . I'm not  
11 sure how much they complained, etcetera.

12 Q Well, you know -

13 A I just observed that they received the subsidy.

14 Q You know that they had to call and complain in order to  
15 , right, sir?

16 A Yeah, although it's a technical issue. There are some  
17 people who got many months later who may not have  
18 called and complained, but still.

19 Q You know -

20 A It's small.

21 Q Mr. Orszag -

22 A We can ignore it for now.

23 MR. PHILLIPS: You're making my two-page outline go  
24 really long here.

25 MR. COHEN: Objection, Your Honor.

1 MR. PHILLIPS: I don't think this requires -

2 JUDGE SIPPEL: Wait a minute. What's the objection?

3 MR. COHEN: I'm objecting to the narrative and  
4 argumentative piece of his question about his outline. He should  
5 just ask his questions. We'll be here. He should just ask his  
6 questions.

7 JUDGE SIPPEL: All right, I'll sustain the objection.  
8 Mr. Phillips, you know what I'm going to say. Let's keep going  
9 here.

10 BY MR. PHILLIPS:

11 Q Yes or no, Mr. Orszag, the control group included the  
12 people who called to complain about losing GSN, correct?

13 A That is correct.

14 Q And yes or no, Mr. Orszag, the treatment group against  
15 which you compared to the control group did not include the  
16 people who called to complain about losing GSN, correct, sir?

17 A By definition, you can't be in both groups. You have to  
18 be in one group or the other. They're in the control group.  
19 People who called and complained but didn't receive the subsidy  
20 would be - and didn't subscribe to the sports tier, would be in the  
21 treatment group.

22 Q Okay, sir, I take it that that was a yes?

23 A By definition, they can't be in both groups. It's yes,  
24 they cannot be in both groups.

25 JUDGE SIPPEL: Let me just ask something in the meantime.

1 If I'm hearing your testimony right, you say you found the  
2 viewership lift, is this right, lift of 1.4 seconds is not  
3 significant. Am I using the term right?

4 MR. ORSZAG: Yes.

5 JUDGE SIPPEL: But Dr. Singer found a lift of in excess  
6 of two percent. Is that right?

7 MR. ORSZAG: He found a two-and-a-half second increase.

8 JUDGE SIPPEL: Seconds, not percent.

9 MR. ORSZAG: No, it was two percent, but it was  
10 two-and-a-half seconds, and that was, he says, statistically  
11 significant, although I have issues with how he did the statistical  
12 analysis.

13 JUDGE SIPPEL: No, aside from all of that, the difference  
14 between the 1.4 seconds that you found and his two or  
15 two-and-a-half seconds, is that significant?

16 MR. ORSZAG: I don't think it's a test that either of us  
17 have run. My guess would be that it's not statistically  
18 significant, but I haven't done that analysis.

19 JUDGE SIPPEL: Okay, how many seconds would you like to  
20 see before it became significant, ballpark?

21 MR. ORSZAG: In my analysis, I haven't gone back to check  
22 what the level is, so I can't answer your question. I'm sorry. It  
23 would be included in the back of the material, but sitting here  
24 it's not in the testimony.

25 JUDGE SIPPEL: All right, that's fair. Another question

1 I have is has there ever been a test - let me back up. I have a  
2 feeling that, a layman's feeling, that if - Cablevision owns WE tv.  
3 Is that a fair characterization, I mean, when you pierce all  
4 through the veils and everything?

5 MR. ORSZAG: We're treating it that way.

6 JUDGE SIPPEL: Yes, let's treat it that way now. And you  
7 have an outside competing with your - well, let's say it's not  
8 competing. But you have to make an adverse decision as to putting  
9 one or the other up on a sports tier where they're basically  
10 foreigners. Assume I'm right for this question. Don't owners have  
11 a tendency to favor their own? I mean, I've heard references to  
12 family and things like that in this case, I mean, you know.

13 MR. ORSZAG: Well, the cost structure and -

14 JUDGE SIPPEL: Forget about the - well, has there ever  
15 been a scientific, has there ever been an economic analysis of  
16 that? Do companies, integrated companies, favor their own children  
17 basically?

18 MR. ORSZAG: I'm not aware of - answer it that way. What  
19 I would say is that when the FCC has looked at the reasons why  
20 cable companies have vertically integrated, one of the reasons that  
21 benefits to consumers that they've noted is that consumers benefit  
22 because vertically integrated companies are more likely to launch  
23 new networks, and launch networks that consumers want.

24 And so, you could - that's a benefit to consumers that  
25 the vertically integrated cable companies tend to more likely

1 launch new networks. And so I don't know if I'd use the word  
2 favoritism. I would say it's an observation that they tend to be  
3 more willing to invest in the launching of a new network because -  
4 and that's something that the FCC has observed.

5 JUDGE SIPPEL: Well, let me put the question this way.  
6 You want your own creation to succeed more than, say, a purchased  
7 in programmer. Your own programmer is in house. Your people  
8 develop it in some way, shape, or form. You want it to succeed  
9 more so than you would want a brought in programmer, which Game  
10 Show is.

11 MR. ORSZAG: Well, sitting at the corporate pairing,  
12 they're looking out for the interests of the combined entity, and  
13 the answer would be yes.

14 JUDGE SIPPEL: But there is no way of an economic  
15 analysis of that factor?

16 MR. ORSZAG: I'm sure there is, but I'm not aware of  
17 somebody who has actually analyzed it the way you're articulating,  
18 so - and I'm pretty well attuned to the literature. I know there  
19 was a working paper that sort of was trying to get at that kind of  
20 issue. But on some of these issues, the data, you don't have the  
21 kind of richness of set top box data, or at least third party  
22 researchers don't have the richness of those types of analyses.

23 JUDGE SIPPEL: Yeah, but with the precision that the  
24 court insisted on in Tennis Channel, and in this analysis of  
25 whether there has been discrimination, wouldn't that be a factor,

1 I mean, looking at it as an economist?

2 MR. ORSZAG: Well, as an economist, the way I articulate  
3 it is if Cablevision were not vertically integrated and were just  
4 a cable company, what would it do? Would it have acted the same  
5 way? I think that makes the most sense to me because if they  
6 weren't vertically integrated, and they would have tiered GSN  
7 anyway, then it wasn't because they had affiliated programming.

8 And then you have to ask the question, was the tiering of  
9 GSN profitable for the cable company? And what you observe is it  
10 was a very profitable decision for the cable company because  
11 they've saved a month. They had an increase in  
12 subscribership for the sports tier, and they didn't lose a  
13 significant number of subscribers.

14 And so those factors then suggest that within the four  
15 corners of the cable company, of Cablevision, it was a profitable  
16 decision. So what else should they have done? That division is  
17 making a profitable decision and rational business conduct, and -

18 JUDGE SIPPEL: But you said you didn't do an analysis of  
19 the reverse. If you did the flip-side, you didn't do the analysis.

20 MR. ORSZAG: Of WE.

21 JUDGE SIPPEL: Yes, of WE.

22 MR. ORSZAG: I did not. In order to do that - you can  
23 obviously test how much they would save because that's just  
24 multiplication. But we can't test how many - it's hard to -  
25 there's no examples out there to test the effect of tiering on how

1 many people would churn, for example, or -

2 JUDGE SIPPEL: You can't do it in a hypothetical.

3 MR. ORSZAG: Precisely.

4 JUDGE SIPPEL: You don't have the data.

5 MR. ORSZAG: I don't have the data to do it on a  
6 hypothetical.

7 JUDGE SIPPEL: Okay, well, I think I've gotten an answer.  
8 I'm sure I've gotten my answer. Let's go. I mean, not the answer  
9 I was looking for, I mean my question was answered.

10 MR. PHILLIPS: Your Honor, we're going to come back to  
11 some of that. I'm going to go to a few other things first, but I'm  
12 going to come back to it.

13 BY MR. PHILLIPS:

14 Q Now, you've talked about economic significance, Mr.  
15 Orszag. You didn't - you don't know - you didn't do a test to  
16 figure out what would be economically significant here, correct,  
17 sir?

18 A That is correct.

19 Q And now, you're aware, are you not, that WE tv's ratings  
20 declined between the two periods you tested, April 2010 and April  
21 2011, correct, sir?

22 A For Cablevision subscribers according to Nielsen, it  
23 increased for the New York DMA.

24 Q Okay, but for Cablevision it - WE declined in its Nielsen  
25 ratings, correct, sir?

1       A     Yes, but you have to remember that's 300 to 400 people in  
2     the - so it's - I don't know if it was a statistically significant  
3     decline. That's what I'm trying to articulate. We observed a  
4     decline, but anything with such a small sample size is not going to  
5     be reliably measured.

6       Q     You're aware that it was of some concern to WE  
7     executives, correct, sir?

8       A     Sitting here today, I'm not sure I am aware of that.

9           MR. PHILLIPS: Okay, actually let me - do you have his  
10    notebook? I'm going to hand you a notebook so we can look at some  
11    documents. And if I can -

12           JUDGE SIPPEL: Sure, you may.

13           MR. PHILLIPS: There's one for Your Honor.

14           JUDGE SIPPEL: Thank you.

15           MR. ORSZAG: Thank you.

16           JUDGE SIPPEL: It's a notebook that says, "Game Show  
17    cross examination of Jonathan Orszag."

18           BY MR. PHILLIPS:

19       Q     So I'd like you to look at GSN Exhibit 311. Have you  
20    seen this document before?

21       A     I'm not sure if I have. I may have in the context of my  
22    review of this, but sitting here I'm not - it's not something  
23    that's fresh in my mind.

24       Q     Do you know who Kim Martin is?

25       A     Yes, I do.

1 Q And who is she?

2 A She's an executive at WE tv.

3 Q Okay, and she writes - and do you know the list down here  
4 of the people she's writing to?

5 A I don't know all of the people on this list.

6 Q Do you know Mr. Broussard?

7 A I do.

8 Q And who is he?

9 A He's also an executive at WE tv.

10 Q And Mr. Martin writes, "WE tv is seeing ratings declines  
11 in every single daypart on every series unlike anything we've ever  
12 experienced." Do you see that, sir?

13 A Yes, I do.

14 Q Okay, now, so sir, that goes to my question. You are  
15 aware that there was concern among Cablevision executives that they  
16 were having a decline in ratings?

17 A I was just made aware of it.

18 Q Okay, is that a fair - do you think I'm being fair to  
19 this document, sir?

20 A She seems to be concerned about the decline in ratings.  
21 That is fair.

22 Q In your opinion, have you excluded any possibility that  
23 the decision to tier GSN was made with reference to helping WE tv  
24 ratings? Can you say that categorically, sir?

25 A I'm confused. Can I just ask a question? This document

1 is from July 26, 2011, which is after the retiering, so presumably  
2 if they had retiered GSN to benefit WE, this would have occurred  
3 before that, but it was after this. So I'm a little confused by  
4 the timeline there.

5 Q It's looking back, is it not, sir?

6 A But it says it's looking back one month. It says, "It  
7 all started about one month back."

8 Q Sir, let me ask you -

9 A So that would be June 2011.

10 Q Let me ask you the question again, sir.

11 A Okay.

12 Q Can you exclude the possibility that the decision to tier  
13 GSN was not made to help WE tv ratings?

14 A I have not seen anything in any analysis to suggest that  
15 it was to benefit WE tv ratings, and this document doesn't change  
16 that.

17 Q Can you exclude the possibility, sir, yes or no?

18 A Based on my analyses, I can exclude it, but obviously I  
19 haven't done every single analysis in the whole world.

20 Q Now, your direct test analysis, did it control for  
21 channel placement, sir?

22 A No, it did not.

23 Q Okay, and channel placement could be important to  
24 viewership, correct, sir?

25 A It's possible, but one cannot include it as part of the

1 model because that would introduce what's called an endogenous  
2 variable, and then you would have the potential problem with your  
3 regression results with regard to that coefficient. I know it's a  
4 technical issue and I'm sorry to get into it here, but it is an  
5 issue with regard to that question.

6 Q And it's an issue that you could not control for in your  
7 direct test, is that correct, sir?

8 A I do not control for my direct test. It's the behavior  
9 of - how consumers actually acted that I'm looking at.

10 Q Let's go on to your switching analysis which you  
11 described to the court with Mr. Cohen. Now, your switching  
12 analysis, as I understand it, looks at viewing patterns,  
13 particularly switching between GSN on the one hand and either WE tv  
14 or Wedding Central, correct, sir?

15 A That is correct.

16 Q Now, you and I have been around this a long time, since  
17 I think 2008 or '09. Now, I don't remember you doing this analysis  
18 on the NFL Network. Is that correct, sir?

19 A That is correct because I didn't have the access to the  
20 set top box data that I have available here, and that richness of  
21 data allows us to do analyses that were not possible in previous  
22 matters.

23 Q And you didn't do this in the Tennis Channel case either  
24 did you, sir?

25 A I have the same answer. I didn't have access to - and I

1 don't know if Comcast even has set top box data, so I don't know if  
2 it's even possible to do this type of analysis. That's what's so  
3 unique about this case in the sense that there's a richness of data  
4 that was not available on previous cases, so one can do far richer  
5 and better tests than one could have done in those previous  
6 matters.

7 Q So you - and you've not worked with set top box microdata  
8 before this case, have you, sir?

9 A This was the first - well, the first part of the case was  
10 the first time I worked with it, subsequently I - the microdata.  
11 I had worked with the more macrodata before or aggregated data.  
12 Now subsequent to this case, I have now used it in other matters  
13 for other - involving other cases in this industry.

14 Q Now, you're not aware of any external audit of  
15 Cablevision's set top box microdata, are you, sir?

16 A I don't like the word audit because when I think of audit  
17 I think of an accountant and I get scared. I think of - audit can  
18 mean a review by an outside party, and Cablevision does engage  
19 third parties to consult with it about the collection and  
20 improvement of its set top box data.

21 Q And the set top box data that you - but you're not aware  
22 of any audit of, are you, sir?

23 A Well, I know that they have third parties that they  
24 consult with regard to improving the quality of the data.

25 Q Have you ever seen an audit of it, sir?

1       A     A formal audit? That's not - I'm struggling with the  
2 word audit.

3       Q     Have you seen a comprehensive look at whether or not it's  
4 reliable or not done by a third party, sir?

5       A     Well, I'm a third party and I looked at it relative to  
6 Nielsen, so I'm struggling with your word audit. The answer is -  
7 have I seen a third party report testing its - verifying it? No.  
8 Have I seen third party analysis to help improve it? Yes.

9           And have I seen third - have I done an analysis to test  
10 it? And the answer is yes. And do the business people use it in  
11 the ordinary course of business in the real world to make business  
12 decisions? And the answer is yes too.

13       Q     Now, the set top box data that you looked at doesn't tell  
14 you who is watching the television at the time, correct, sir?

15       A     That is correct.

16       Q     There's also a phenomenon called forced tuning, correct,  
17 sir? Are you familiar with that phenomenon?

18       A     Yes, I am.

19       Q     And Cablevision uses forced tuning, correct, sir?

20       A     I believe that to be true, not necessarily on every  
21 system, but on many systems.

22       Q     Right, and forced tuning is so that when you turn on your  
23 television, it automatically goes to an affiliated channel,  
24 correct, sir?

25       A     I don't know if it's necessarily an affiliated channel

1 with each MVPD, but it goes to a channel.

2 Q Your set top box data that you looked, the sample size  
3 was I think you said?

4 A That is correct.

5 Q Now, I take it that sample size is important to the  
6 reliability of data?

7 A It can be. It depends on the analysis that one is doing.  
8 And as a general proposition, more data is better.

9 Q Would you be comfortable using a smaller sample?

10 A Yes.

11 Q Would you be comfortable using a sample?

12 A Yes.

13 Q But it would not have the predictive power of a  
14 sample, correct, sir?

15 A It depends on the question one is examining, and it may  
16 or may not depending upon the issue that one is looking at.

17 MR. COHEN: Mr. Phillips, are you moving onto a different  
18 area?

19 MR. PHILLIPS: Not yet.

20 MR. COHEN: Okay, when you do, Your Honor, could we have  
21 a ten minute break whenever it's convenient? I apologize, but it  
22 would be helpful.

23 JUDGE SIPPEL: Well, let's see where we are.

24 MR. PHILLIPS: I've got a few more questions on  
25 switching, and then I can move.

1 JUDGE SIPPEL: Okay, continue.

2 MR. PHILLIPS: And I think I can do them quickly. But  
3 I'll be assisted in that, Your Honor, if I could get yes or no.

4 JUDGE SIPPEL: I've heard that before, and I will take it  
5 you're going to make a good faith effort at it.

6 BY MR. PHILLIPS:

7 Q Your switching analysis did not control for channel  
8 placement, did it, sir?

9 A It did not.

10 Q Okay, and it's not possible to correct your switching  
11 analysis for channel placement or neighborhooding, correct, sir?

12 A Well, one could in theory just say, you know what, let's  
13 - it wouldn't necessarily be appropriate, but as a rough  
14 approximation say, "Let's just exclude the four networks that are  
15 closest, plus or minus, to, say, WE tv or Game Show Network," and  
16 I don't know if it would fundamentally change the results because  
17 instead of being 30 seconds or whatever it was, it would be 24th.

18 Q You didn't do that analysis though, did you, sir?

19 A Well, I did in the sense that I talk about the question  
20 of channel placement and I considered whether one should make a  
21 formal adjustment, but one could obviously make an implicit  
22 adjustment by just looking at the tables and excluding any channel  
23 that's close by.

24 Q But you didn't run the analysis on your switching, sir,  
25 by excluding any channels. You included all of them, correct?

1       A       I did include all of them, but it's just simple math to  
2       exclude if you wanted to do plus or minus four stations.

3       Q       And you also - you recognize that switching analysis also  
4       tests the popularity of networks, correct, sir?

5       A       That's a market reality that part of what's happening is  
6       people go to certain networks, and they tend to go to more popular  
7       networks, yes.

8       Q       So that it would not be surprising to find that, for  
9       example, the switching analysis went to one of the major networks  
10      from a smaller network, correct, sir?

11      A       That's a market reality of how people actually react,  
12      yes. That's not surprising.

13             MR. PHILLIPS: Okay, I am not moving on yet, but this is  
14      a nice time to break.

15             MR. COHEN: Your Honor, I just need a ten minute break to  
16      go down the hall.

17             JUDGE SIPPEL: Okay, let's go. Let's take 15 minutes,  
18      another 15 minutes.

19             (Whereupon, the above-entitled matter went off the record  
20      at 11:58 a.m. and resumed at 12:12 p.m.)

21             JUDGE SIPPEL: Mr. Orszag, you're still under oath, sir.

22             MR. ORSZAG: Thank you. I understand.

23             MR. PHILLIPS: So, Mr. Orszag, I'll take you back to Mr.  
24      Cohen's book.

25             MR. ORSZAG: Okay. I'm in Mr. Cohen's book. Thank you.

1 MR. PHILIPS: And I'm going to ask you some questions  
2 about some of these charts he showed you.

3 MR. ORSZAG: Sure.

4 MR. PHILLIPS: So, you go to what is Table 5. Are you  
5 with me? Your Honor, do you have a book?

6 JUDGE SIPPEL: Yes. I was just thinking. Table 5 in the  
7 --

8 MR. PHILLIPS: It's in Mr. Cohen's book, not in my book.

9 JUDGE SIPPEL: In this book. I understand. I  
10 understand. Table 5 on the Tabs. I have it. Table 5.

11 MR. PHILLIPS: Now this is, Mr. Orszag, just to remind  
12 us, this is a Table from your switching analysis. Correct, sir?

13 MR. ORSZAG: That is correct.

14 BY MR. PHILLIPS:

15 Q And this is switching to WE tv. Correct, sir?

16 A That is correct.

17 Q And you point out that GSN is number 32 on this switching  
18 to WE tv. Correct, sir?

19 A That is correct.

20 Q Now, I'm looking and I also note that is Number  
21 . Correct, sir?

22 A That is correct.

23 Q Now, is it your understanding that WE tv regards  
24 as part of its competitive set?

25 A I have seen some documents that may have mentioned

1           as part of the competitive set for some purposes. I don't  
2 know if they include it for all purposes.

3           That's a question better focused at a WE tv executive.

4       Q     And we've heard a lot. I take it that the people in this  
5 room heard a lot of that already.

6           Now, --

7           JUDGE SIPPEL: Let me just alert to some concern. We're  
8 having as to Mr. Orszag, is that please limit your questions as  
9 much as you can to yes and no. And don't elaborate so far out.

10          Just --

11          MR. ORSZAG: Okay.

12          JUDGE SIPPEL: Shorten up the questions and slow down a  
13 little bit.

14          MR. PHILLIPS: And indeed sir, you even put in your  
15 report that your review of WE tv documents indicate that WE tv's  
16 competitive set includes           right?

17          MR. ORSZAG: For some purposes, yes.

18          BY MR. PHILLIPS:

19       Q     I'm sorry, sir, could you read to me the first sentence  
20 of paragraph 89. It's on page 72.

21       A     My review of WE tv documents indicate that WE tv  
22 competitive set networks generally included

23

24

25           And then I cite various documents.

1 Q Thank you, sir. So, now we look and we saw where  
2 where GSN is. It's 32, correct? And we looked and saw  
3 it's number . It's on your list, sir. Correct?

4 A That's correct.

5 Q , that's another one on your list, sir?

6 A That is correct.

7 Q And where is it?

8 A It's number .

9 Q It's behind GSN, isn't it, sir?

10 A Yes, it is.

11 Q And . That's another one that you mentioned here in  
12 paragraph 89?

13 A Yes.

14 Q And where is that one, sir?

15 A It's number .

16 Q Thank you, sir. And ?

17 A It's number .

18 Q Okay, sir. And Wedding Central, where is that one, sir?

19 A Number 42.

20 Q Also behind GSN, isn't it, sir?

21 A That is correct.

22 Q Now, Wedding Central shows a lot of the same programming  
23 as WE. Doesn't it, sir?

24 A I've not done an analysis of what percentage of their  
25 programming is. So I can't answer that one way or the other.

1 Q Okay. You don't know as we're sitting here, one way or  
2 the other?

3 A No, I do not.

4 Q And this analysis you did is based on Cablevision set top  
5 box data. Correct, sir?

6 A That is correct.

7 Q So this is only with the Cablevision footprint. Correct,  
8 sir?

9 A That is correct.

10 Q Thank you. So, that was Table 5. Let's move on and look  
11 at the next Table.

12 Oh, I'm sorry. It's great having Ms. Reavo here because  
13 she always tells me what I've missed.

14 Let's go to the page before. Let's go to Table 4.

15 JUDGE SIPPEL: You know what I'm missing? I'm missing a  
16 Table 6.

17 MR. PHILLIPS: I don't think they gave you all the  
18 Tables, Your Honor.

19 MR. COHEN: Your Honor, all the Tables are in the body of  
20 his direct testimony. We only excerpted certain things that I knew  
21 he was going to reference those to on direct, not his direct, his  
22 oral direct.

23 But, every Table in order is in the direct testimony.

24 JUDGE SIPPEL: Fair enough. Fair enough.

25 MR. PHILLIPS: So, let's look -- so, I take it Table 5 we

1 just did are the switching rates from networks to WE tv. Correct,  
2 sir?

3 MR. ORSZAG: That is correct.

4 BY MR. PHILLIPS:

5 Q And Table 4 are the switching rates from WE tv to these  
6 networks. Correct, sir?

7 A That is correct.

8 Q So, let's look and see what we find here of the channels  
9 that you have indicated belonged to WE tv's competitive set in  
10 paragraph 89. So, GSN, they're 33 again. Correct, sir?

11 A That is correct.

12 Q And where's ?

13 A is number .

14 Q Okay. And where is , sir?

15 A Number .

16 Q And that's behind GSN. Sir, correct?

17 A That is correct.

18 Q And , where is that one?

19 A Number .

20 Q And that's another one that  
21 you've included in paragraph 89 as part of the competitive set,  
22 sir. Correct?

23 A And were included in one document or at least one  
24 document that was used in the analysis.

25 Q Well, you included it in your sentence there in paragraph

1 89 we just read a few minutes ago. Isn't that right, sir?

2 A Right. It wasn't necessarily in every single document.  
3 It was in one of the documents I saw.

4 Q I'm sorry, sir. Really? Yes, no, either, I can't answer  
5 it yes or no. And then I'll follow -- decide to follow it up.  
6 Okay?

7 A It was included in at least one of their competitive set  
8 documents, yes.

9 Q Yes, sir. And in fact your -- the sentence that we  
10 quoted in paragraph 89, just to remind you, sir, it says, that my  
11 review of WE tv documents indicate that WE tv's competitive set  
12 networks generally included.

13 Do you see that, sir?

14 A Yes, I do.

15 Q You didn't put a caveat on it. You said generally  
16 included. Didn't you, sir?

17 A Right.

18 Q Thank you, sir. And that's  
19 another one that was generally included. Right, sir?

20 A That is correct.

21 Q And where is that one on this chart, sir?

22 A Number .

23 Q That's behind -- that's spaces behind GSN if I count  
24 right.

25 A That is correct.

1 Q Okay. And sir, where is that one?

2 A Number .

3 Q So, it's fair to say that the competitive set that you  
4 pointed out of that, generally included the networks of the  
5 competitors that you pointed out in 89, range from to on this  
6 chart. Don't they, sir?

7 A I don't agree to that. Because there were other networks  
8 that were included that are much higher on this list.

9 Q Well, we just looked at That's generally  
10 included, is it not, sir?

11 A I know, but you said that was -- that all of them were  
12 between and . And the point is, that there are --

13 Q I'm sorry, you're right. Some of them -- I haven't gone  
14 through and taken every one in the paragraph.

15 But there's some that are above GSN. And there are some  
16 that are below GSN. Correct, sir?

17 A That is correct.

18 Q On this chart and on Table 5 as well. Correct, sir?

19 A That is correct.

20 Q By the way, where is on this chart?

21 A Number .

22 Q Okay. And is that in the competitive set?

23 A I don't know if I saw it in the competitive set of  
24 documents. I'd need to go back and review those documents.

25 I don't think it was listed in the paragraph, in the

1 sentence that I read.

2 Q So let's -- let's move on. We've done Table 4 and we've  
3 done Table 5. Let's go to Table 8. Are you there with me?

4 A Yes, I am.

5 MR. PHILLIPS: Okay, Your Honor, I'm sorry. I'm  
6 switching again. Table 8.

7 JUDGE SIPPEL: I'm with you.

8 MR. PHILLIPS: Okay. And Mr. Orszag, what's this chart  
9 again?

10 MR. ORSZAG: This shows according to Nielsen, the overlap  
11 in viewership between WE tv and each of these networks. So, what  
12 percentage of WE tv viewers also watched the network that is listed  
13 in the ranking.

14 BY MR. PHILLIPS:

15 Q Again, and you pointed out that GSN was on this list.

16 A That is correct.

17 Q Now, in that paragraph 89, generally competitive set  
18 networks, , where is that on this list?

19 A Number .

20 Q Okay. And where is on this list, sir?

21 A Number .

22 Q All right. Thank you, sir. Oh, by the way, I noticed  
23 Wedding Central's not on this list. Sir, do you know why?

24 A It wasn't included in the Nielsen ratings.

25 Q Oh, it's not big enough to make Nielsen. Correct, sir?

1 A It was not -- yes.

2 Q So, not to leave them out, let's go to Table 10.

3 A I'm there.

4 Q Okay. Looking at that same paragraph 89, competitive  
5 sets of networks that are generally in the competitive set of WE  
6 tv, let's look and see where is on this one?

7 A Number .

8 Q And GSN is right behind it at 39. Is that correct, sir?

9 A That is correct.

10 Q But, leading by places is sir. Do you see  
11 that?

12 A That is correct.

13 Q And another places over at . Correct, sir?

14 A That is correct.

15 Q And way ahead of Wedding Central, sir. Correct?

16 A That is correct.

17 Q You're a quick reading Mr. Orszag. Now, I want to go if  
18 I can to the question of duplication analysis. You talked for a  
19 while about that. You ran it every different way that you could.

20 Primary duplication that looks at -- that looks at the  
21 reach of a network. And why don't you describe it for me, sir.  
22 Because I need it drawn out for me.

23 A Primary duplication, so say GSN's primary duplication  
24 with -- from the perspective of WE would be equal to the percentage  
25 of WE tv viewers who also watched GSN.

1 Q And secondary duplication is what, sir?

2 A It's the inverse of that. So it's the percentage of --  
3 if you -- GSN's secondary duplication from the perspective of WE is  
4 equal to the percentage of GSN's viewers who are WE tv viewers.

5 Q Now, would you agree with me sir, that large networks,  
6 very popular networks, tend to show up higher when you do a primary  
7 duplication metric. When you look at it. Correct, sir?

8 A Large networks show up higher because people are more  
9 likely to watch them. Yes, I would agree with that.

10 Q And on secondary duplication, small networks that don't  
11 have a lot of viewers tend to show up higher. Correct, sir?

12 A The numbers are the numbers as they're described. But --

13 Q But in the ranking, it tends to show -- it just tends to  
14 work out that way because of the way the math works. Correct, sir?

15 A It's not how the math works. It's how viewers behave.  
16 So, viewers are -- WE tv views are more likely to watch a more  
17 popular network.

18 And so it's going to have a higher primary duplication.  
19 Because that's what they actually do.

20 Q And for small networks, they're going to be more highly  
21 ranked because the percentage of viewers, it doesn't take as many  
22 of a smaller network to watch WE tv, to put them further up the  
23 scale. Correct, sir?

24 A It is, I mean, I don't -- but I don't understand your  
25 question. Because, it is what it is. People watch -- there's a

1 percentage of GSN viewers who watch ABC. Or a percentage of ABC  
2 viewers who watch GSN.

3 That is what it is. And then it's just -- it's the --  
4 the relevant question. So, I'm a little confused. I'm sorry.

5 Q Would you agree, sir, that the size of the network tends  
6 to drive the result in both primary and secondary duplication?

7 A You're suggesting that's a negative. That's an exact of  
8 what happens in the real world that viewers behave that way, yes.

9 Q Okay. I'm just trying to get a yes or no. Would you  
10 agree that the size of the network seems to drive the result?

11 A I'll agree to that because it's a factual statement.

12 Q Now, you don't like both duplications. Correct, sir?

13 A It's a measure. I just don't know its purpose for, like  
14 the degree of competition between the networks. I struggle with  
15 its meaning.

16 Q Yes. You said it's pretty meaningless in this context.  
17 Didn't you, sir?

18 A I do.

19 Q Yes, okay. So, now can I take you to turn to the Tab  
20 called Duplication Results?

21 A Yes, I'm there.

22 JUDGE SIPPEL: Which Tab would that be?

23 MR. PHILLIPS: It's just called Duplication Results.

24 JUDGE SIPPEL: Oh, I see. Yes, I got it right here. Oh,  
25 yes.

1 MR. PHILLIPS: Now sir, on page 78, which is the second  
2 page of that Tab, sir.

3 MR. ORSZAG: Yes, I'm there.

4 BY MR. PHILLIPS:

5 Q At WE tv's both duplication rank, from the perspective of  
6 GSN, now this is the measure you don't like. I understand that.

7 Could you tell me where WE tv ranked with respect to GSN  
8 in both duplication from the persons 18 plus demographic?

9 A It was

10 Q Second out of how many?

11 A . And the first one I believe was

12 .

13 Q Okay. And the -- and for females 18 plus demographic,  
14 where did WE tv rank from the perspective of GSN?

15 A It ranked .

16 Q Okay. And for persons 25 to 54 demographic, where did WE  
17 tv rank from the perspective of GSN in both duplications?

18 A Second.

19 Q And from -- for the all-important female, 25 to 54  
20 demographic, where did WE tv's both duplication rank from the  
21 perspective of GSN?

22 A It ranks first.

23 Q Now you don't like that metric, do you, sir?

24 A I don't -- it's a metric. It's not a -- the question is  
25 for competition between the networks, I'm trying to understand it.

1           Because what it equals, and I think we didn't -- you  
2   asked me about primary and secondary. So if it's okay, I'll  
3   describe what both are.

4           It's the percentage of overlap viewers divided by total  
5   viewers between the two.

6           JUDGE SIPPEL: But, what's this?

7           MR. PHILLIPS: I'm sorry, you answered my question sir.

8           MR. COHEN: Your Honor, I don't think -- the question was  
9   do you like it? I mean, well, so I don't know -- I didn't object  
10   to that question.

11          But, I'll just ask him on redirect so we can hear it now  
12   or we'll figure it out. We'll figure it out later, Your Honor.

13          MR. PHILLIPS: Your Honor, I just want to get through  
14   this examination.

15          JUDGE SIPPEL: Yes. And you can do it the way you want.

16          MR. PHILLIPS: And what I'd like are not long speeches  
17   that aren't really pertinent to my questions. But instead just  
18   giving the yes or no, or I can't answer it yes or no.

19          I really think that's all that's necessary here.

20          JUDGE SIPPEL: Okay. Can you do that Mr. Orszag?

21          MR. ORSZAG: Yes. And I --

22          JUDGE SIPPEL: As best you can.

23          MR. ORSZAG: I will try.

24          JUDGE SIPPEL: And keep it -- slow the answer down a  
25   little bit.

1 MR. ORSZAG: Okay. I will do so. Sorry about that.

2 MR. PHILLIPS: Excuse me one second. Yes, so, I would  
3 like to take you and your report to -- and I notice that you didn't  
4 accept this one I don't believe in the back here.

5 So, I just want to make sure we don't leave a side out.  
6 But sir, could you turn in your report to Table 15 on page 71.

7 MR. ORSZAG: Yes, I'm there.

8 BY MR. PHILLIPS:

9 Q And this is a chart that's based on Cablevision set top  
10 box data, sir?

11 A Yes, it is.

12 Q And what's it showing me?

13 A It's what share of -- I just want to make sure that I  
14 describe it correctly. It's an April 2010 what share of GSN  
15 viewers watched at least one hour of each of these networks.

16 Q Okay. And where is WE tv on this?

17 A It is ranked number

18 Q And where is in this?

19 A Number

20 Q And where's Wedding Central on this?

21 A Number

22 Q Thank you, sir. And that's out of 87 networks?

23 A That is correct.

24 Q Now sir, when you looked at GSN and things from GSN  
25 perspective, you acknowledged that at least comparatively that WE

1 is closer to GSN's competitive set then maybe GSN is to WE's  
2 competitive set. Correct, sir? Is that a fair statement?

3 A I think as a general matter I can agree to that. Because  
4 the data suggests that that's the case.

5 Q All right. And so, to some extent, competitive sets  
6 depend upon the perspective that you apply in order to determine  
7 them. Correct, sir?

8 A Absolutely.

9 Q And that's true also for the distance analysis. Correct,  
10 sir?

11 A That is correct.

12 Q And your distance analysis is from the perspective of WE  
13 tv. Correct, sir?

14 A Yes, it is. And I included in my backup material the --  
15 both perspectives.

16 MR. PHILLIPS: Now, if I can go off the record for a  
17 second.

18 (Whereupon, the above-entitled matter went off the  
19 record at 12:32 p.m. and resumed at 12:32 p.m.)

20 JUDGE SIPPEL: Well, it's almost a -- well, it's a little  
21 after 12:30 by that clock. We'll be back at, let me see, quarter  
22 to two.

23 MR. PHILLIPS: Yes, Your Honor.

24 JUDGE SIPPEL: And we're still shooting for the  
25 mid-afternoon, right?

1 MR. PHILLIPS: Yes. Yes, Your Honor.

2 JUDGE SIPPEL: Okay. We're off the record.

3 (Whereupon, the above-entitled matter went off the  
4 record at 12:33 p.m. and resumed at 1:48 p.m.)

5 JUDGE SIPPEL: Okay, let's go back on the record then.

6 And Mr. Orszag, you're still under oath. And Mr. Phillips --

7 MR. PHILLIPS: Thank you, Your Honor.

8 JUDGE SIPPEL: You're still up.

9 MR. PHILLIPS: Mr. Orszag, I want to go and switch from  
10 the similarly situated analysis for a while. And go to the  
11 business justification.

12 You testified that placing GSN on a narrow sports tier  
13 was in your opinion consistent with sound basic judgment. Correct?

14 MR. ORSZAG: That is correct.

15 BY MR. PHILLIPS:

16 Q Now, one important test to look at in terms of -- let me  
17 back up. And sound business judgement because in your view, it was  
18 profitable for Cablevision to put GSN on that sports tier.  
19 Correct?

20 A Profitable for Cablevision's cable division to put them  
21 on the sports tier, yes.

22 Q Yes, exactly.

23 A Yes.

24 Q Right. And in the past you've said that one way that you  
25 can look at whether or not a decision is rational and whether or

1 not a decision is profitable is by what the peers are of the cable  
2 company to it. Correct?

3 A That is correct.

4 Q Right. And did you call this your revealed preferences  
5 test as I recall?

6 A That is correct. And we talked about it earlier today.

7 Q You know, I recall this test really, really well. You  
8 know why? Because in Tennis Channel, I recall you using this test  
9 a lot.

10 A I did use it, yes.

11 Q And in NFL Network, I recall you using this test a lot.

12 A Yes, I did.

13 Q I don't know if Judge Sippel does. But I recall this  
14 very well.

15 A Yes.

16 Q And indeed, would you agree with me that in Tennis you  
17 said in cases where it is not possible for an outside analyst to  
18 assess directly the factors underlying carriage decisions, the most  
19 direct and compelling evidence with regard to the reasonableness of  
20 an MVPD's carriage of a network are the carriage decisions by other  
21 MVPDs?

22 A Yes. And that's what I said this morning.

23 Q Okay. Just want to make sure. Now, is this a case where  
24 it is not possible for an outside analyst to assess directly the  
25 factors underlying carriage decisions?

1       A     No, it is possible in this case.

2       Q     It's possible in this case.  What's different in this  
3 case, sir?

4       A     We have enormous -- it's the set top box data that you  
5 asked me about earlier.  So we have the ability to measure the  
6 impact on churn from the retiering of GSN.  And the ability to  
7 measure the lift, the subscriber lift.

8            The increase in subscribership for the sports tier.  In  
9 other cases we did not have that data.  That type of information to  
10 do those same direct analysis with regard to the impact of the  
11 decision.

12      Q     So, it's set top box data.  That's the difference between  
13 this and Tennis, where revealed preferences was your preferred  
14 analysis.  Correct?

15      A     That's one component.  There's a -- their component is we  
16 actually had the -- and I'm fortunately have been -- trying to  
17 exclude from my mind most of the specific facts of the Tennis  
18 Channel case.

19            But here we have a very tangible tiering event that we  
20 have data from before and after that we can analyze with that set  
21 top box data.

22      Q     Now, you had before and after tiering data for the NFL  
23 Network case as well.  Did you not, sir?

24      A     Sitting here today, I don't know.

25      Q     And in that case in fact, you said that revealed

1 preferences was the most important test you could perform. Do you  
2 recall that, sir?

3 A I did not have set top box data from the NFL Network to  
4 be sure.

5 Q But you did have -- you will agree with me sir that you  
6 did have pre and post hearing data on that?

7 A Sitting here today, I don't remember precisely what we  
8 had.

9 Q Sir, you don't remember having --

10 JUDGE SIPPEL: Careful about talking over one another.

11 MR. ORSZAG: Yes, sir.

12 MR. PHILLIPS: Sir, you don't remember that the NFL  
13 Network, that whole case was about Comcast putting the NFL Network  
14 up on a sports tier?

15 MR. ORSZAG: Well, I do remember it was putting it on a  
16 sports tier. But what data were available that could answer the  
17 question of the impact on those specific questions of profitability  
18 are questions sitting here today that I don't recall.

19 And I know for sure we didn't have the types of set top  
20 box data where you could tease out as a matter of statistics the  
21 behavior of individuals.

22 So, for example, when the Judge asked me a question  
23 about, well how do you know why somebody subscribed to the sports  
24 tier? In that case I couldn't do that type of specific analysis  
25 because I didn't have the set top box data that allows me to look

1 at the more micro issues.

2 BY MR. PHILLIPS:

3 Q Let me ask you, sir, the set top box data that you're  
4 referring to, that's not reviewed for authenticity by any  
5 independent third party, is it?

6 A I'm confused by --

7 Q I asked you earlier about an audit and you choked on the  
8 word audit I think. And I want to sort of use it slightly  
9 differently.

10 JUDGE SIPPEL: Well, I'm not going to take that  
11 characterization. Ask the question.

12 MR. PHILLIPS: Oh, I'm sorry, Your Honor. You're  
13 perfectly right.

14 You disagreed with my use of the word audit. I think  
15 that you were thinking -- you said that it made you nervous.

16 So, --

17 MR. ORSZAG: Accountants make me nervous. So, that's a  
18 --

19 MR. COHEN: Wait a minute. Wait a minute. I'm objecting  
20 it mischaracterizes his prior testimony.

21 JUDGE SIPPEL: Try again.

22 MR. PHILLIPS: Mr. Orszag, with set top box data, to your  
23 knowledge, the data that you're relying on is not reviewed for  
24 authenticity by any third party that's independent of Cablevision.  
25 Correct, sir?

1 MR. ORSZAG: Sitting here today, I know that Cablevision  
2 has a 180-page document about the guidelines that govern the  
3 collection of those data.

4 Whether they have them -- somebody who -- a third party  
5 or whether they authenticate it themselves, that's something I do  
6 not know.

7 I do know what I have explained already.

8 JUDGE SIPPEL: Sir, that's enough.

9 MR. ORSZAG: Okay.

10 MR. PHILLIPS: Your Honor, it was a yes or no question.  
11 I got three sentences in an answer.

12 JUDGE SIPPEL: Well, I could have, I mean it was  
13 previously asked and answered. So, I was letting this go.

14 I thought you were trying to -- I mean I --

15 MR. PHILLIPS: I hear you, Your Honor.

16 JUDGE SIPPEL: I'll do the best I can to measure this.  
17 But, it's -- I'm going to tell him again. Mr. Orszag, --

18 MR. ORSZAG: Sorry.

19 JUDGE SIPPEL: Limit your answers to what you are asked.  
20 And speak slowly and don't get into this traffic of speaking over  
21 one another. Or the transcript is going to get garbled.

22 MR. PHILLIPS: Thank you, Your Honor.

23 JUDGE SIPPEL: Okay. That's fine.

24 MR. PHILLIPS: Mr. Orszag, the set top box data that you  
25 relied upon, it's not published, is it?

1 MR. ORSZAG: No, it is not.

2 BY MR. PHILLIPS:

3 Q And it's not commercially available to people outside of  
4 Cablevision. Is it, sir?

5 A No, it is not.

6 Q Thank you, sir. Now, the reason that you explained to me  
7 why revealed preferences was so important is that the peer  
8 companies are making the same profitability determination that  
9 Cablevision would be making. Correct, sir?

10 A They may have. Generally I agree to that. Yes.

11 Q And if you would take a look at Exhibit 451 in the  
12 notebook that I put before you.

13 JUDGE SIPPEL: This is the cross examination notebook.

14 MR. PHILLIPS: Yes.

15 JUDGE SIPPEL: 451?

16 MR. PHILLIPS: Yes, Your Honor. Now, you've seen this  
17 chart before, haven't you, sir?

18 MR. ORSZAG: Yes, I have.

19 MR. PHILLIPS: And you understand this to be the MVPD's  
20 distribution over \$2 million, sir. Is that correct?

21 MR. ORSZAG: That is correct.

22 JUDGE SIPPEL: Let me read this in the record. This is  
23 Table 8, Tiering Decisions of Large MVPDs as of June 2011.

24 Take it from there Mr. Phillips.

25 MR. COHEN: Your Honor, just for the clarity of the

1 record.

2 JUDGE SIPPEL: Yes?

3 MR. COHEN: I think this is a Table that's taken from Dr.  
4 Singer's direct testimony as well.

5 MR. PHILLIPS: It is indeed.

6 MR. COHEN: Just want to be able to make that clear for  
7 the record.

8 MR. PHILLIPS: It is Table 8 from Dr. Singer's direct  
9 testimony. Now, --

10 JUDGE SIPPEL: Thank you.

11 MR. PHILLIPS: Now, Comcast competes with Cablevision  
12 within part of its footprint, does it not, sir?

13 MR. ORSZAG: No, it does not.

14 BY MR. PHILLIPS:

15 Q It does not. Does Time Warner?

16 A It does not.

17 Q Time Warner does not. Well, it's adjacent to the  
18 Cablevision footprint. Is that right, sir?

19 A That is correct.

20 Q Okay. Within the New York DMA for example?

21 A And other places perhaps as well. Yes.

22 Q And Comcast is also adjacent to Cablevision in some  
23 places. Correct, sir?

24 A That is true I believe. I haven't looked at their maps  
25 to know for sure. But that would make sense.

1 Q And DISH in fact competes with Cablevision. Does it not,  
2 sir?

3 A It does compete with it.

4 Q And Verizon competes with it?

5 A In certain areas, yes.

6 Q And AT&T competes with it, sir. Correct?

7 A I believe in certain areas AT&T has overbuilt  
8 Cablevision, yes.

9 Q Okay. And all the ones that I've just mentioned,  
10 Comcast, DISH, Verizon, AT&T, carry GSN at a penetration rate that  
11 is significantly greater than Cablevision. Correct, sir?

12 A That is correct.

13 Q And indeed Cablevision itself carried GSN on a broadly  
14 distributed tier for 14 years. Correct, sir?

15 A Yes. I don't know those precise dates. But yes, I agree  
16 with that.

17 Q You're not going to quibble with me on the number of  
18 years?

19 A No, I'm not.

20 Q It was a long time. Correct?

21 A A long time.

22 Q Okay. And that wasn't an irrational business decision  
23 was it, sir?

24 A No.

25 Q And you're not claiming that it's irrational for

1 Cablevision's peers to carry it very broadly are you, sir?

2 A I'm struggling with the word peers. But I'm not going to  
3 argue with the fact that these companies for the -- that you've  
4 listed, that it's not irrational for them for the carriage.

5 I believe they're acting in their own self-interest. And  
6 rationally profit-maximizing in how they carry it.

7 Q And if you made the assumption that if GSN were similarly  
8 situated to WE, this peer carriage would matter to you, wouldn't  
9 it?

10 A The carriage of -- as I said, I included this. And it's  
11 a factor in my analysis how other MVPDs carry it in this case as  
12 well as in previous cases.

13 And so, yes, it is a factor for sure.

14 Q Okay. You can put that aside. I may come back to it.  
15 But I'm going to move to something else for a second.

16 Do you -- you have offered an opinion have you not, sir?  
17 That Cablevision's decision to tier GSN is consistent with GSN's  
18 relatively high viewer concentration. Correct, sir?

19 A Generally, that is true.

20 Q Right. You've offered the view that in fact it's  
21 profit-maximizing given the fact that GSN has such a high viewer  
22 concentration. Correct, sir?

23 A That's correct.

24 Q And in fact if I could have you look at your Table 25.

25 A Do you have a page number?

1 MR. PHILLIPS: Sorry, no I don't. I'm sorry. 128.

2 JUDGE SIPPEL: Now you're back to his direct testimony?

3 MR. PHILLIPS: I'm back to his direct, Your Honor. Thank  
4 you.

5 JUDGE SIPPEL: Okay. Is that on page 128?

6 MR. PHILLIPS: Page 128, Table 25.

7 JUDGE SIPPEL: I have that. Network Viewer  
8 Concentration, April 2010. That's what is captioned on Table 25.

9 MR. PHILLIPS: And this is your Table, right Mr. Orszag?

10 MR. ORSZAG: Yes, it is.

11 BY MR. PHILLIPS:

12 Q Okay. And this Table, what does it -- it states the --  
13 what percentage makes up the top five percent of the viewer share.  
14 Correct, sir?

15 If I've got that wrong, please I'm asking you this time  
16 for something more than a yes or a no.

17 A It's the inverse of what you described. It's what  
18 percent -- the top five percent of viewing households accounted for  
19 what percentage of total viewership.

20 So what this says is that a very small -- I think if we  
21 translated this into English, it says for the top networks here, a  
22 very small number of viewers accounted for the vast majority of  
23 viewership.

24 Q So, a small number of viewers watched the program very  
25 intensely, correct?

1 A Correct.

2 Q So much more intense followings for these. Correct, sir?

3 A Intensity -- I can agree to that.

4 Q Okay. And that's the reason that -- and you note that

5 GSN is third on this list. Correct, sir?

6 A Yes, it is.

7 Q And WE tv is down at 33rd. Correct, sir?

8 A That is correct.

9 Q And you posit in your opinion that this would be a reason  
10 to put GSN on a sports tier.

11 A Yes.

12 Q And that because those intentionally loyal viewers would  
13 follow it to a sports tier and pay that \$6.99 a month. Correct,  
14 sir?

15 A That is correct.

16 MR. PHILLIPS: I have a question for you, sir. Let me  
17 ask the Reporter to mark as GSN Exhibit -- oh, it's already marked?  
18 GSN Exhibit 452. Which is another Table from Dr. Singer's report.  
19 In fact it's Table 1.

20 (Whereupon, the above-referred to document was marked as  
21 GSN Exhibit No. 452 for identification.)

22 MR. PHILLIPS: May I show it, Your Honor?

23 JUDGE SIPPEL: Yes, you may. Any objections?

24 MR. COHEN: I haven't seen it yet, Your Honor.

25 MR. PHILLIPS: I think it's already into evidence as part

1 of Dr. Singer's report.

2 JUDGE SIPPEL: We don't have -- oh, I just want to know  
3 is there any objection to him showing this to the witness.

4 MR. COHEN: No objection, Your Honor.

5 MR. PHILLIPS: Okay.

6 BY MR. PHILLIPS:

7 Q Now, Mr. Orszag, do you recognize this as the list of  
8 networks on the Cablevision sports and entertainment tier from  
9 October 2010 to September 2011?

10 A Yes.

11 Q Okay. Now, can you compare this to your Table 25 of the  
12 high-intensity viewer concentration networks?

13 A Not directly.

14 Q You don't see any overlap there do you, except for GSN?

15 A Well, the decision of whether to -- the answer is I  
16 haven't compared the lists, so I can't tell you if I have. Do you  
17 want me to spend some time?

18 Q I'm comparing those right now. If you want to spend some  
19 time, because if your hypothesis is right that the networks on  
20 Table 25 should be the ones that go on a tier because they're the  
21 most intense viewing, I'm wondering if you have had explained to  
22 why other than GSN none of those networks show up on Table 1?

23 A Because there's three factors that will determine -- at  
24 least three factors, whether somebody goes on the tier. One is the  
25 price, two is the concentration of viewers, and then three is the

1 reach of the viewers. And so, each of those will determine where  
2 is optimal for the MVPD to place the program. And so, this is just  
3 one of the pieces. And that's why I said this is indicative of a  
4 desire to -- indicative of the decision to place it on a tier  
5 because of the one factor.

6 Q Well, let's just take those factors again. The first one  
7 you said was price, correct, sir?

8 A Yes.

9 Q Would that mean lower price or higher price goes in a  
10 tier? How is the price cut?

11 A Well, it depends on the relevant price of putting it on  
12 a tier versus putting it on a more broadly-penetrated tier. So you  
13 could think about the question of if -- if somebody said to me, you  
14 know what, it's going to be ten cents per subscriber if you put on  
15 a tier and it's going to be free if you don't put it on a tier.  
16 You -- that changes the equation versus somebody who has a much  
17 different pricing scheme for the two different scenarios. So this  
18 is just one factor and you can't just extrapolate from this one  
19 factor to the actual decision because there's other factors that go  
20 into it.

21 Q Mr. Orszag, I'm just trying to follow your logic here  
22 that you said these viewers of the highest concentration should be  
23 the ones that go on a tier. And I notice that none of them are on  
24 the tier except GSN. And I'm trying to understand if you've done  
25 an examination as to why that is.

1       A     I haven't gone to the next level of examining the other  
2 factors, but this one factor would then push to how I describe that  
3 it's optimal from an economic perspective all of the things being  
4 equal to place it on a tier.

5       Q     Now --

6           JUDGE SIPPEL: But that was the -- price was one thing.  
7 What was the second thing, second factor?

8           THE WITNESS: It's also reach.

9           JUDGE SIPPEL: And the third was?

10          THE WITNESS: Concentration.

11          JUDGE SIPPEL: Thank you. Go ahead, Mr. Phillips.

12          BY MR. PHILLIPS:

13       Q     But, sir, I take it that when you say price -- and I  
14 asked you, well, does that mean high price or low price, you say it  
15 depends.

16       A     It's a relative price. The relative price of having it  
17 on a tier versus having it on say a sports and entertainment tier  
18 to the price of having it on a more broadly-penetrated tier.

19       Q     Most networks charge the same price per sub, correct?

20       A     That's not true.

21       Q     That's not true? Are you aware of any on this list of  
22 the sports networks for which that's not true?

23       A     Oh, the price will -- in case after case, and I've seen  
24 thousands of contract documents in my life working in this  
25 industry, the price, if you were going to put something on a tier,

1 would be different than the price negotiated if it were on say  
2 expanded basic.

3 Q The price per sub?

4 A Price per sub.

5 Q Okay, sir. Now again, I'd like to find out which out  
6 which ones of those you know that to be true for on this list.  
7 It's not true for the Tennis Channel now, is it?

8 A Sitting here today, I don't remember the contract details  
9 between Cablevision and the Tennis Channel, so I can't tell you one  
10 way or the other.

11 Q Which ones of these do you believe there's a price  
12 differential between on the per subscriber price -- between what it  
13 is in the tier and what it is on another penetrated tier?

14 A Sitting here today I haven't analyzed these contracts to  
15 tell you what the differential price would be in those two  
16 circumstances.

17 Q Okay. And in terms of reach, sir, is it -- for tiers, do  
18 you expect greater reach or less reach to be a factor in the  
19 tiering decision?

20 A Networks that tend to have greater reach tend to be more  
21 likely to be on expanded basic tiers, where less reach tends to be  
22 on less penetrated tiers.

23 Q So I see CBS College Sports. I would think that would  
24 have a pretty substantial reach, sir. Correct?

25 A I don't have the reach data in front of me, so I can't

1 tell you one way or the other where it sits on the reach. I can --  
2 you're hypothesizing. I don't have the empirical evidence sitting  
3 here.

4 Q So you can't offer any meaningful opinion as to whether  
5 or not reach was a factor with CBS College Sports?

6 A Sitting here today I cannot, no.

7 Q Nor with NHL Network, for example?

8 A No, I cannot.

9 Q Nor with ESPN Classic?

10 A No, I cannot.

11 Q Nor the Big Ten Network?

12 A I don't have the reach data in front of me, so it's the  
13 same answer for every network.

14 Q Wouldn't you expect those networks to have a pretty  
15 expansive reach?

16 A If it's an empirical question, I'd want to look at the  
17 data. I don't want to hypothesize about it.

18 Q You're not comfortable just giving me what you think  
19 might be the answer without looking at the empirical data?

20 A Sitting here today, that's -- I haven't committed that to  
21 memory, no.

22 JUDGE SIPPEL: Well, what's your best estimate?

23 THE WITNESS: Reach and concentration tend to be, but not  
24 for all networks, inversely related. But it doesn't have to be.  
25 That's the problem. So I only have the viewer concentration data.

1 It's a figure that is available from Nielsen about reach. It's  
2 just I don't have it at my fingertips, so I can't give an answer,  
3 because it's not -- I was examining GSN and WE.

4 JUDGE SIPPEL: All right. Okay. You've answered my  
5 question. Go ahead.

6 BY MR. PHILLIPS:

7 Q Now, Mr. Orszag, you don't know whether MVPD has actually  
8 used your concentration in making tiering decisions, do you?

9 A They use the idea. Whether they use it how I've  
10 calculated here, sitting here today, I do not know.

11 MR. PHILLIPS: If I may, Your Honor, I'd like to show you  
12 the deposition of Mr. Orszag that was taken in 2013 and 2015.

13 (Whereupon, the above-referenced document was marked as  
14 GSN Exhibit No. 437 for identification.)

15 JUDGE SIPPEL: Yes, sir. You want to go ahead with this?  
16 Are these going into evidence or what?

17 MR. PHILLIPS: I think the charts are already into  
18 evidence as part of Mr. Singer's report.

19 JUDGE SIPPEL: All right.

20 MR. PHILLIPS: But I'm happy, if you don't think so, to  
21 move them into evidence and see if Mr. Cohen objects.

22 MR. COHEN: I have no objection.

23 JUDGE SIPPEL: So that's GSN 452 is coming in.

24 (Whereupon, the above-referenced document was received  
25 into evidence as GSN Exhibit No. 452.)

1 MR. PHILLIPS: Do you have it?

2 MR. COHEN: I do.

3 MR. PHILLIPS: All right. We can use that --

4 JUDGE SIPPEL: If it has a number and it's loose, that  
5 bothers me, unless there's good reason for it.

6 MR. PHILLIPS: Yes, we'd also move 451 into evidence,  
7 Your Honor.

8 MR. COHEN: No objection, Your Honor.

9 JUDGE SIPPEL: Received.

10 (Whereupon, the above-referred document was received into  
11 evidence as GSN Exhibit No. 451.)

12 BY MR. PHILLIPS:

13 Q Mr. Orszag, this past March you came over to my offices  
14 and responded to questioning from my colleague here, Ms. Flahive-  
15 Wu, correct, sir?

16 A That's correct.

17 Q And Ms. Flahive-Wu points out that she thinks this is my  
18 deposition, not hers. In any event, I'm going to ask you --

19 BY MR. PHILLIPS:

20 Q - and at that time, Mr. Orszag -- are you there with me?

21 A Yes.

22 Q I asked you, line 23, are you aware whether or not other  
23 MVPDs used your concentration as a metric in making carriage  
24 decisions? And your answer, on the next page, was sitting here  
25 today I have not talked about viewer concentration with other

1 programming executives. So I asked you, so the answer to my  
2 question is no? Your answer, one way or the other I do not know  
3 sitting here today. You see that, sir?

4 A Yes, I do.

5 Q Did you give that testimony, sir?

6 A Yes, I did.

7 Q Thank you. Is viewer concentration a standard industry  
8 metric?

9 A It's one that, subsequent to this deposition I -- in  
10 reviewing documents Mr. Montemagno looked at in his consideration  
11 of this issue in this case was the loyalty of particular viewers,  
12 so that's why I said I know it's something that people have looked  
13 at. But sitting there on that day I didn't remember me personally  
14 talking to folks. But it is a factor about the loyalty of viewers  
15 that executives look at.

16 Q Sir, I asked you is it a standard industry metric? Now,  
17 please, is it, is it not, or you can't answer?

18 A Well, the -- what I'd say is that the way I -- I have  
19 done it as an economist would do it. I'm not aware of a  
20 programming executive doing it the identical way, but the general  
21 idea is something that they have used, but they use it in however  
22 they're going to analyze it from their own business perspective.

23 Q Is viewer concentration a metric used by Nielsen?

24 A Nielsen -- not that I'm aware of, no. They use reach as  
25 their measure.

1 Q And reach is a different measure than viewer  
2 concentration, is it not, sir?

3 A Yes, it is.

4 Q Is viewer concentration a metric reported by anybody,  
5 sir?

6 A No, it's an economic analysis that I'm doing to help  
7 inform this discussion.

8 Q And it's an economic analysis you're doing on the basis  
9 of set top box data, correct, sir?

10 A That is correct.

11 Q And the set top box data is not published to anyone other  
12 than Cablevision, correct, sir?

13 MR. COHEN: Objection. Asked and answered multiple  
14 times.

15 JUDGE SIPPEL: I will sustain that objection.

16 BY MR. PHILLIPS:

17 Q Sir, let me go back for a second. We just talked about  
18 the fact that GSN; and I think you agreed with me, had sort of more  
19 intentionally loyal viewership than WE tv. Do you recall that?

20 A They have more concentrated viewers, yes.

21 Q Yes, I think that you in fact -- and perhaps you want to  
22 take it back, but at the time you agreed with me that it was more  
23 intensely loyal.

24 MR. COHEN: Objection, Your Honor.

25 BY MR. PHILLIPS:

1 Q Do you recall that, sir?

2 JUDGE SIPPEL: Wait a minute. Wait a minute. What's the  
3 objection?

4 MR. COHEN: He's mischaracterizing his testimony.

5 MR. PHILLIPS: I'm not mischaracterizing --

6 MR. COHEN: He said do you want to take it back? Just  
7 ask questions without preamble.

8 JUDGE SIPPEL: Well, I'm going to allow him to do it  
9 anyway. Unless you can't answer the question. Can you answer the  
10 question? If you can answer the question --

11 THE WITNESS: Can you repeat the question?

12 BY MR. PHILLIPS:

13 Q Sir, you agreed that in your view, GSN has a more  
14 intensely loyal audience, correct?

15 A You can say loyal or concentrated. It's one and the same  
16 for that concept, that it's concentrated among more -- a smaller  
17 group of people, yes.

18 Q People who like GSN really do like it a lot, correct sir?

19 A Yes, they do.

20 Q Okay. Now, when you take away a very loyal audience or  
21 an intensely viewing audience, you are more likely to find people  
22 upset about it, correct, sir?

23 A That is possible, yes.

24 Q Yes, in fact, when GSN got taken away, Cablevision got  
25 phone calls complaining about it, correct, sir?

1 A Something on that order of magnitude, yes.

2 Q And more in the initial period than people called about  
3 FOX network, is that correct, sir?

4 A I haven't tabulated those numbers one way or the other,  
5 so I can't specify precisely, but they got a lot of phone calls.

6 Q If you could take a look at the cross-examination binder  
7 that you had in front of you and look at GSN 116.

8 JUDGE SIPPEL: GSN 116?

9 MR. PHILLIPS: Yes.

10 BY MR. PHILLIPS:

11 Q So, Mr. Orszag, have you seen this document before?

12 A I believe so, but it's not fresh in my recollection.

13 Q Well, I just wanted to point you to the second page from  
14 Mr. Boler of Cablevision to a list of people, where he writes,  
15 yesterday, we coded calls received regarding the Game Show  
16 Network. To put this call volume in perspective, during the  
17 programming dispute with FOX the highest amount of calls coded  
18 related to that disputed one day was . Do you see that, sir?

19 A Yes, I do.

20 Q Okay. You don't have any reason to doubt that they got  
21 more calls about GSN being taken off than about FOX, do you, sir?

22 A No, I do not.

23 Q And you would agree with me, sir, that the more upset  
24 people are, the more likely they are to churn?

25 A That's possible, yes.

1 JUDGE SIPPEL: That's possible?

2 THE WITNESS: Yes.

3 JUDGE SIPPEL: But you can't accept that as a given?

4 THE WITNESS: Well, it's not a given because you can  
5 mitigate via customer service strategies for example, by giving  
6 people the channel for a period of time, which could then minimize  
7 any effect. So it's not a given that it will happen. It's just --  
8 it's a possible outcome.

9 JUDGE SIPPEL: Okay.

10 BY MR. PHILLIPS:

11 Q Seems intuitive that the more people like a network, you  
12 take it away, the more complaints you're going to get, correct?

13 A It's not just like, but the more intensely people desire  
14 it, yes, the more likely to help attract and retain subscribers.

15 Q And it seems intuitive that when you take away something  
16 that people feel intensely about, they're going to churn at a  
17 greater frequency. You wouldn't agree with that, sir?

18 A Well, this is the problem is that some people may churn,  
19 but some people may also decide to purchase the programming and pay  
20 whatever it takes to get the programming because they like it so  
21 much. And so, you have both effects. And that's why you have to  
22 analyze both effects as part of your analysis.

23 Q Okay. So, just to make sure I understand this, somebody  
24 who decides to pay for the subscription, the margin on that I think  
25 you said was about a person, correct? a

1 household.

2 A At least a person, yes.

3 Q Okay. And what's the margin loss on a churn for an  
4 average household?

5 A On a family tier, Dr. Singer has used .

6 Q Do you know what the average is?

7 A Sitting here today I don't because it wasn't a necessary  
8 component of my analysis.

9 Q Do you disagree that it's higher than ?

10 A I don't disagree that it could be higher, but I don't  
11 have a calculation to tell you what it is.

12 Q So even at and using your margin on the sports tier,  
13 for every person that churns, you need people to take the  
14 sports tier to break even, correct, sir?

15 A That is a mathematical equation, yes.

16 Q Thank you, sir. I'm good at math. So let me just put a  
17 pin in that point for a second, because I want to go to a slightly  
18 related one.

19 Do you know what GSN's -- oh, I'm sorry. I may need to  
20 have -- this is going to be confidential.

21 JUDGE SIPPEL: Do we have anybody here?

22 MR. COHEN: Yes.

23 JUDGE SIPPEL: Okay.

24 MR. COHEN: Just give us a moment, Your Honor.

25 JUDGE SIPPEL: Thank you.

1 MR. PHILLIPS: Ms. Flahive-Wu usually kicks me when I'm  
2 about to go into confidential, but she didn't this time.

3 MR. COHEN: It may be coming.

4 (Laughter)

5 MR. PHILLIPS: There's no doubt about that.

6 (Laughter)

7 MR. COHEN: Thank you, ma'am.

8 JUDGE SIPPEL: Thank you.

9 CLOSED SESSION BEGINS

10 BY MR. PHILLIPS:

11 Q So do you know what the per sub price for GSN is on a  
12 monthly basis?

13 A It's roughly

14 Q Okay. The per sub price for WE tv on a monthly basis?

15 A I believe it's

16 Q Okay. So WE tv is more expensive than GSN, correct, sir?

17 A On a per sub basis, yes.

18 Q Right. And how many subscribers does GSN have roughly  
19 during this time period?

20 A Which time period are you talking about?

21 Q 2010-2011. Before the tiering.

22 A Two point -- you know, something between  
23 subscribers.

24 Q And how many subscribers did WE tv have?

25 A Roughly the same number.

1 Q Okay. So if WE tv is more expensive on a per subscriber  
2 basis and GSN is less expensive on a per subscriber basis -- do you  
3 know what the monthly fee is, by the way, that Cablevision was  
4 paying to WE tv?

5 I'm just talking about  
6 the straight subscriber fees.

7 A Well, it would be roughly times the number of  
8 subscribers.

9 Q Okay. And my math's not that good. But you would agree  
10 with me that on a monthly basis that WE tv was more expensive than  
11 GSN distributed to the full Cablevision audience, correct?

12 A That is correct.

13 Q And that therefore, putting WE tv on a tier, looking only  
14 at the cost revenues, would save more money than putting GSN on a  
15 tier, correct, sir?

16 A That is one element of the equation, but it's only one  
17 part, yes.

18 Q I understand, but you agree with me as far as that  
19 element goes, sir?

20 A Looking at that one element, yes.

21 Q Okay. And another element would be churn, correct? The  
22 byproduct of putting them up there is the churn that you're going  
23 to get. What cost are you going to incur, correct, sir?

24 A That is part of the analysis, yes.

25 Q And as we talked about, GSN had a more loyal viewing

1 audience than WE did, correct, sir?

2 A It was more concentrated among a smaller group of people.

3 Q I think you said loyal before, sir.

4 A Well, you can call them GSN loyalists, but they have a  
5 concentrated group of people who watch a lot of their programming.

6 Q Okay.

7 A They also have lower ratings, so they have less viewers.

8 Q Now, sir, let me ask you, did you do any independent test  
9 to see how much it would cost to put WE on the sports tier?

10 A No, I did not.

11 Q Did you do any independent test to see what it would cost  
12 to put Wedding Central on a sports tier?

13 MR. COHEN: I'm sorry. Can we open the courtroom?

14 MR. PHILLIPS: Yes, absolutely.

15 JUDGE SIPPEL: Thank you.

16 MR. COHEN: Thank you. I'm sorry, Your Honor.

17 JUDGE SIPPEL: That's all right.

18 MR. PHILLIPS: We always forget. Ms. Flahive-Wu was  
19 supposed to kick me on that one, too, but --

20 CLOSED SESSION ENDS

21 THE WITNESS: Should I answer?

22 BY MR. PHILLIPS:

23 Q Yes.

24 A The answer is no.

25 MR. PHILLIPS: I'm not. I'm not unless Jay raises it.

1 If he raises it, I'm going to.

2 JUDGE SIPPEL: Should we be party to that sidebar?

3 MR. PHILLIPS: Ms. Flahive-Wu is very wisely telling me  
4 things that I should cover and I'm telling her in my less-wise way  
5 of thinking that I'm not going to.

6 JUDGE SIPPEL: Well, I'm just saying just kind of keep it  
7 to yourself.

8 MR. PHILLIPS: Okay. I'm sorry, Your Honor. You're  
9 right.

10 BY MR. PHILLIPS:

11 Q Is it possible as a matter of economic modeling to do  
12 that analysis for WE?

13 A Sitting here today, as I described earlier, I don't think  
14 so.

15 Q Well, if you had the right data, you could do it, though,  
16 couldn't you?

17 A You need both data and an experiment to do it. Yes, once  
18 you -- if you had both, then you could, but without the experiment,  
19 then you can't do the analysis reliably.

20 JUDGE SIPPEL: Well, no, this is a good example as far as  
21 that could have simply been answered by yes.

22 THE WITNESS: Sorry.

23 JUDGE SIPPEL: And you got off into -- well, so please  
24 avoid that.

25 THE WITNESS: Okay. I'm sorry.

1 BY MR. PHILLIPS:

2 Q You talked earlier today a little bit about churning of  
3 Wedding Central, correct?

4 A Yes, I did.

5 Q Did you do any study of churning on Wedding Central?

6 A The only study I did was with regard to inputting the  
7 analysis consistently into Dr. Singer's model. I did not do an  
8 independent analysis of Wedding Central.

9 Q And other than some bride on Long Island who was upset,  
10 you're not aware of any evidence of complaints about Wedding  
11 Central's lack of availability, correct, sir?

12 A No, I'm not.

13 Q Some bride on Long Island, those were your words, were  
14 they not, sir?

15 A I don't remember those precise words, but maybe they  
16 were.

17 Q Now, after Cablevision took the action and put GSN on a  
18 sports tier and it received all these phone calls in the exhibit  
19 that we looked at before, Cablevision could have reversed that  
20 decision, could it not?

21 A They could have, yes.

22 Q Much like Coke did with New Coke, correct?

23 A Yes.

24 Q You're smiling because you used that example to me,  
25 didn't you?

1 A Yes, I did.

2 Q And you're aware that Cablevision decisions considered  
3 reversing that decision when they got the pushback from GSN  
4 loyalists, correct, sir?

5 A I don't know if I'm aware of that. I'm sorry.

6 Q Well, let's take a look at the -- there was an old sports  
7 announcer in New York who used to say let's go to the videotape.  
8 I don't have any videotape, but --

9 JUDGE SIPPEL: You know who that was?

10 MR. COHEN: Warner Wolf.

11 JUDGE SIPPEL: Exactly.

12 BY MR. PHILLIPS:

13 Q But let's go to the exhibits.

14 JUDGE SIPPEL: What number?

15 MR. PHILLIPS: Exhibit No. GSN Exhibit 127.

16 JUDGE SIPPEL: That's in the cross-examination book?

17 MR. PHILLIPS: It is indeed, sir.

18 JUDGE SIPPEL: Tell us when you have it, doctor, or Mr.  
19 Orszag.

20 THE WITNESS: I'm here.

21 JUDGE SIPPEL: That was a memo sent February 5, 2011, is  
22 that right?

23 MR. PHILLIPS: It's a series of emails here. And it  
24 starts with a news article in the Bergen record on the back page,  
25 Your Honor, that says, Cablevision has a unique ability to get

1 customers teed off. Consider its latest move switching the Game  
2 Show Network, a channel devoted to TV game shows, from its expanded  
3 basic tier to its sports pack. And go on and there's a discussion  
4 among executives. And I want to go up to the first page, about a  
5 third of the way down, where Mr. Montemagno writes --

6 JUDGE SIPPEL: First page or second page?

7 MR. PHILLIPS: First page. These go in reverse order,  
8 Your Honor, so the beginning is at the bottom and they go up to the  
9 more recent emails.

10 JUDGE SIPPEL: I see it.

11 BY MR. PHILLIPS:

12 Q It says, I know Brad told me Bickham insisted on it.

13 I'm  
14 hoping no reversal is in the cards, to which Jim Maiella responds  
15 to Mr. Montemagno, reversal not terrible. We'll look like we  
16 screwed up, tried to pull one over, got slammed and thought better  
17 of it, but at least the channel will be back. Almost calls  
18 over two days is a lot of outrage even if it hasn't hit the press  
19 yet except for a couple of tsk tsk stories. Maybe they'll cut the  
20 rate. Do you see that, sir?

21 A Yes, I do.

22 Q Had you seen that document before now?

23 A Sitting here I'm not -- I can't recall one way or the  
24 other.

25 Q Were you aware that senior Cablevision executives were

1 considering reversing the decision after they made the decision to  
2 tier?

3 MR. COHEN: Objection, Your Honor. That  
4 mis-characterizes this document, which we've been through with the  
5 fact witnesses.

6 JUDGE SIPPEL: Okay. Let's try it again. Sustain the  
7 objection.

8 BY MR. PHILLIPS:

9 Q Okay. Are you are aware that there was a discussion  
10 among senior Cablevision executives about whether or not to reverse  
11 the decision?

12 A Sitting here today I didn't know one way or the other.

13 Q All right, sir. I'm going to go to a different subject  
14 with you for a second. Now you've not done an analysis of whether  
15 GSN tiering had a harmful effect on competition, have you, sir?

16 A Well, if it hasn't unreasonably restrained the ability of  
17 someone to compete, then it seems hard for it to have a harm to  
18 competition, so I'd say I have done that analysis.

19 Q All right, sir. Well, did you do that analysis between  
20 the time that Ms. Flahive-Wu asked you questions in my office and  
21 today?

22 A No. Well, if you analyze -- I haven't done additional  
23 analysis. Just in the interest of brevity, I'll give that -- I  
24 have not done additional analysis.

25 JUDGE SIPPEL: Thank you.

1 MR. PHILLIPS: In the interest of brevity, I'm just going  
2 to move on through, Your Honor.

3 JUDGE SIPPEL: Thank you.

4 MR. PHILLIPS: I know that you've been here for two  
5 weeks, even if I haven't.

6 JUDGE SIPPEL: That's right. I could have remind you of  
7 that, but I glad to know that you recall that.

8 MR. PHILLIPS: I know that, Your Honor. I've been paying  
9 attention. I've been debriefed every single day on it by my  
10 partner here.

11 BY MR. PHILLIPS:

12 Q Mr. Orszag, you would agree with me that Cablevision is  
13 the dominant distributor in its footprint, correct?

14 A No, I would not.

15 Q You would not? It has a roughly 61 percent market share  
16 within its footprint, correct, sir?

17 A That figure is roughly equivalent within their footprint,  
18 but I would not use the word dominant.

19 Q You don't think a 61 percent market share is dominant  
20 within its footprint?

21 A No.

22 Q Okay. So as I understand it that means Cablevision  
23 enjoyed 61 percent of the MVPD subscribers of the homes that it  
24 passes in New York DMA, correct, sir?

25 A No, that is not correct.

1 Q Okay. Then how is it wrong?

2 A Because you just said the New York DMA. Cablevision's  
3 footprint doesn't encompass the whole DMA and --

4 Q I understand that, but my question was in fact of the  
5 homes it passes, homes that have access to it in New York DMA.  
6 That's not everybody in the New York DMA, is it?

7 A That is correct.

8 Q And its footprint consists of the homes that have access  
9 to it, correct?

10 A That is correct.

11 Q And in its footprint it has a 61 percent market share,  
12 correct, sir?

13 A That is roughly correct.

14 Q And you're aware that that's the figure that they report  
15 in their 10-K?

16 A I believe that's something roughly that number. I --  
17 sitting here today -- that's not a number I committed to memory,  
18 but that's roughly correct.

19 Q Now you said you've seen nothing special about the New  
20 York DMA that would give it significance beyond us New Yorkers,  
21 correct, sir?

22 A I have seen no empirical evidence that would support a  
23 conclusion that it's -- that you should give it extra weight.

24 Q All right. Well, have you talked to Mr. Dolan about it?

25 A No, I have not.

1       Q       Were you aware that Mr. Dolan believes that it has a  
2       larger market, larger importance to the market than its particular  
3       market share?

4               MR. COHEN: I'm going to object if he's referring to  
5       specific testimony.

6               MR. PHILLIPS: I'll put it in.

7               JUDGE SIPPEL: All right.

8               MR. COHEN: Let's just have it accurate.

9               MR. PHILLIPS: Okay.

10              JUDGE SIPPEL: I'll sustain the objection.

11              MR. PHILLIPS: I'll put it in. Your Honor, if I may  
12       approach?

13              JUDGE SIPPEL: Yes.

14              MR. PHILLIPS: This is deposition testimony of Mr. James  
15       Dolan.

16              JUDGE SIPPEL: This is deposition testimony of Mr. James  
17       Dolan. It's called Joint Exhibit 3.

18              (Whereupon, the above-referenced document was marked as  
19       Joint Exhibit No. 3 for identification.)

20              BY MR. PHILLIPS:

21       Q       So, Mr. Orszag --

22       A       Yes, sir?

23       Q       -- if you'd turn to page 10.

24              JUDGE SIPPEL: What are these highlights about?

25              MR. PHILLIPS: I think they're the designations that the

1 parties have designated to go into evidence, Your Honor. I'm going  
2 to be reading from material that has been designated by GSN. The  
3 blue is GSN and the yellow is Cablevision.

4 JUDGE SIPPEL: I've got it. Page 10?

5 MR. PHILLIPS: Page 10. I'm going to start with line 16.

6 BY MR. PHILLIPS:

7 Q And is that an important market in your experience?

8 Answer: I think the New York marketplace is important, yes.

9 Now, let me stop here. You know who Mr. James Dolan is,  
10 don't you?

11 A Yes, I do.

12 Q Could you tell me who he is?

13 A He's a chief executive with Cablevision.

14 Q And his family owns Cablevision, a large portion of it,  
15 correct?

16 A I believe they own a large portion, yes.

17 JUDGE SIPPEL: They hold 50 percent.

18 THE WITNESS: I don't know the precise ownership share,  
19 but a very significant share.

20 BY MR. PHILLIPS:

21 Q So you wouldn't argue with Mr. Dolan about what he thinks  
22 about how important the New York market is, would you?

23 A Mr. Dolan's coming at this as a business executive. He  
24 is very knowledgeable in the industry.

25 Q Okay. So and he goes on to say, he says, I think the New

1 York marketplace is important, yeah. Line 20, why is that?  
2 Twenty-one, well, because it is one of the largest marketplace.  
3 I'm trying to remember if it is number one or number two, because  
4 we keep going back and forth with Los Angeles. So it's either  
5 number one or number two. Question: and is there a significance to  
6 being the largest carrier in the number one or number two market in  
7 the country? Answer: I think so. Question: what is that  
8 significance? Answer: the viewership. The viewers that we have  
9 here, the customers that we have here are desirable customers, I  
10 think, you know. And, you know, I think it's -- I mean, I think  
11 it's kind of self-evident that being the largest operator in the  
12 largest market right here, that it gives you market power and it  
13 gives you ability to -- to -- to operate in a way that -- you know,  
14 that gives you more size than probably you actually have.

15 You see that, sir?

16 A Yes, I do.

17 Q Now as you said, Mr. Dolan is the chief executive of  
18 Cablevision, correct, sir?

19 A I believe that's his title.

20 Q Right. And you've never served as an executive in a  
21 media company, have you, sir?

22 A No, I have not.

23 Q And you don't have a master's of business or anything, do  
24 you, sir?

25 A I have a master's of science.

1 Q Bachelors's of science. But not in business, is it, sir?

2 It's in economics?

3 A It's in economics.

4 Q And do you have an MBA, sir?

5 A No, I do not.

6 Q Just a couple more questions for you, Mr. Orszag, and I  
7 promise you I'll let you loose. In a few places in your testimony;  
8 in fact, in several places in your testimony you talk about how  
9 you've examined contemporaneous documents from the record. So I'll  
10 just give you an example, although I can give you more. If you'd  
11 turn to paragraph 141 on page 117.

12 A Yes, sir.

13 Q And in the second sentence you say, contemporaneous  
14 documents shed light on factors considered by Cablevision's  
15 management in making the decision to re-tier GSN. My review of  
16 those documents indicates that a number of factors entered into the  
17 GSN re-tiering decision. And it goes on. Do you see that, sir?

18 A Yes, I do.

19 Q And as I said, there are a few places where you -- you  
20 reviewed documents, some of the emails and other correspondence,  
21 correct sir?

22 A That is correct.

23 Q Now, sir, and you derive some conclusions from your  
24 reading of those emails, correct, sir?

25 A It was part of my analysis, but most of my analysis is

1 the economics that I discussed earlier.

2 Q Yes, and so your reading of those emails, you didn't  
3 apply any econometric analysis to those emails, did you, sir?

4 A No, I did not.

5 Q And so there's nothing that you have sitting there as a  
6 witness that Judge Sippel doesn't have in reading those documents,  
7 do you, sir?

8 A No, I do not.

9 Q And so there's no expertise to reading the documents that  
10 you put down in there that you read, correct, sir?

11 A I'm reading them as an economist would, and that's -- is  
12 part of my overall analysis, but there's no special expertise, no.

13 Q Okay.

14 MR. PHILLIPS: Judge, if you give me a minute, I may be  
15 done.

16 JUDGE SIPPEL: I'll accept that minute. And I'll raise  
17 you one.

18 MR. PHILLIPS: My colleagues tell me I'm done. Thank  
19 you, Mr. Orszag.

20 MR. COHEN: Your Honor, we could move right to the  
21 redirect, unless Your Honor wants a break. The witness needs a  
22 break.

23 JUDGE SIPPEL: Let's take a break. Well, 10 minutes  
24 we'll try --

25 MR. COHEN: Thank you.

1 JUDGE SIPPEL: No problem.

2 (Whereupon, the above-entitled matter went off the record  
3 at 2:39 p.m. and resumed at 2:52 p.m.)

4 JUDGE SIPPEL: Let's go back on the record. Mr. Cohen,  
5 it's your witness.

6 MR. COHEN: Okay, thank you, sir.

7 REDIRECT EXAMINATION

8 BY MR. COHEN:

9 Q Mr. Orszag, there was testimony during the  
10 cross-examination about Dr. Singer's corrections to your direct  
11 test in terms of the number of viewers who moved to GSN -- to WE,  
12 after GSN was retiered. Do you recall that?

13 A Yes, I do.

14 Q And I just want to clear that up. Is it correct that  
15 what you arrived at was about 1.4 seconds additional viewing in  
16 your direct test?

17 A That is correct.

18 Q And in terms of seconds, what does Dr. Singer come up  
19 with?

20 A Roughly 2.5 seconds.

21 Q And do you believe that his adjustment to your direct  
22 test is appropriate from an economic perspective?

23 A No, I do not.

24 Q Why not?

25 A Because in his econometric analysis, he excludes those

1 Cablevision subscribers who subscribe to the Sports Tier and

2 So he's excluding some data as part of his analysis.

3 And that data gives information that should be included in the  
4 analysis and that's one of the factors for why he finds a slightly  
5 different result. But even the difference, I mean, we really are  
6 splitting hairs here in some sense, 1.4 seconds, 2.5 seconds.

7 No matter what, from the perspective of WE, it is an  
8 insignificant effect in terms of its viewership, its ratings. And  
9 so it couldn't possibly affect business decision-making or the  
10 profitability because it is so tiny. I mean, we are talking about  
11 such a small share of the overall viewership, either something on  
12 the order of magnitude of 0.03 percent or 0.056 percent. I mean,  
13 this is tiny numbers.

14 JUDGE SIPPEL: If I heard it right, you said that Dr.  
15 Singer -- would this be a methodology error or a calculating error?

16 Well, let me ask the question this way. Let me ask my  
17 question this way. Think about that. You are saying Dr. Singer  
18 included those GSN viewers but once they got up there in the tier,  
19 they actually paid the extra six bucks or whatever it was, and  
20 didn't complain about WE. Do you include those and

21  
22 THE WITNESS: He is excluding -- yes. So, he is  
23 excluding data which is relevant for the analysis and I would say  
24 it weakens the explanatory power of his model, and that's  
25 inappropriate. And so those data should be included.

1 BY MR. COHEN:

2 Q So, to answer the Judge's first question, so that sounds  
3 like a methodological error.

4 A I think methodological is fair.

5 Q Let me just show you --

6 JUDGE SIPPEL: Thank you for that clarification, Mr.  
7 Cohen.

8 BY MR. COHEN:

9 Q Mr. Phillips showed you -- asked a bunch of questions  
10 about competitive sets. And just to make this easy, I have marked  
11 as Exhibit 663 paragraph 89 from your testimony that has the  
12 competitive set networks. So, I would like to go through Mr.  
13 Phillips' tables. You won't have to flip back and forth.

14 JUDGE SIPPEL: This is marked as --

15 MR. COHEN: CV 663, Your Honor.

16 JUDGE SIPPEL: Thank you, sir.

17 (Whereupon, the above-referred to document was marked as  
18 CV Exhibit No. 663 for identification.)

19 BY MR. COHEN:

20 Q Okay, now, he took you through a series of tables.  
21 First, the networks that are in the competitive set of WE, those  
22 are the ones that are listed here in paragraph 89?

23 A Yes.

24 Q

25

1 Right?

2 A Yes, those were the ones that were generally included.

3 Q Okay, let's go to Table 4. He showed you Table 4 and he  
4 asked you -- and this is switching rates from WE tv. So, this is  
5 switching away from WE tv and you see that GSN is number

6 A Yes, I do.

7 Q And he pointed out to you that is number That  
8 is below GSN.

9 A Yes.

10 Q is number ?

11 A Yes.

12 Q Okay, look at number , Is that in the  
13 competitive set?

14 A Yes, it is.

15 Q Number , , in the competitive set?

16 A Yes, it is.

17 Q in the competitive set?

18 A Yes, it is.

19 Q in the competitive set?

20 A Yes, it is.

21 Q in the competitive set?

22 A Yes, it is.

23 Q in the competitive set?

24 A Yes, it is.

25 Q in the competitive set?

1 A Yes, it is.

2 Q Turn to Table 5, please. This is to WE switching rate.

3 So, this is how viewers move from other networks to WE tv and you  
4 see that GSN is number ?

5 A Yes, I do.

6 Q And you see that I think he asked you about , which  
7 is number Do you remember that?

8 A Yes, I do.

9 Q And , number ?

10 A Yes, I do.

11 Q Look at number , which one is that?

12 A It's

13 Q In the competitive set?

14 A Yes, it is.

15 Q Can you identify for me, rather than me doing it,  
16 quickly, which of the networks in the competitive set are above GSN  
17 in the two WE switching rates?

18 A Hold on one second. Well, I know , that is  
19 number

20 Q Right.

21 A is number is number

22 Q Right.

23 A is number . is number . is  
24 number Would you like me to continue?

25 Q No, I think that's enough. So, and all of those are

1 above GSN?

2 A Yes, that's correct.

3 Q Alright. And they are in the competitive set of WE.

4 A According to those documents, yes.

5 Q Okay, look at Table 8, please. You were asked about  
6 this. You said that GSN is number in terms of WE tv viewership  
7 by persons at least 18 years of age based on Nielsen.

8 A Yes, that is correct.

9 Q Alright. Now, there has been a lot of questions about  
10 duplications and rankings. This specific table that has  
11 percent of WE tv viewers who also watch the network -- do you see  
12 that for GSN? What does that represent, just so we're clear?

13 A That is if WE tv had 100 viewers, also  
14 watched GSN.

15 Q Okay. And your point on this was that GSN is number ?

16 A Yes.

17 Q Do you remember he showed you that , which is in  
18 the competitive set of WE, is number ?

19 A Yes, I do.

20 Q Okay. And is this primary duplication that we are  
21 looking at in this chart?

22 A It is roughly equal to primary duplication.

23 Q Okay. Now, if we look at ones he didn't ask about, do  
24 you see number , ?

25 A Yes.

1 Q And that is in the competitive set?

2 A Yes.

3 Q And is ?

4 A Yes.

5 Q And is ?

6 A Yes, it is.

7 Q is ?

8 A Yes, it is.

9 Q is ?

10 A Yes, it is.

11 Q is ?

12 A Yes, it is.

13 Q is ?

14 A Yes, it is.

15 Q is ?

16 A Yes, and you missed is . That's  
17 on the list.

18 Q Okay, and is

19 A Yes, it is.

20 Q And is ?

21 A Yes, it is.

22 Q And all of these are above GSN in terms of viewer  
23 overlap?

24 A That is correct.

25 Q Okay, one last table. I'm going to show you Table 10.

1 This is network viewership share by WE tv household. Just remind  
2 us -- this is from set-top box data. Remind us what this is.

3 A This is the share of viewing that is, if you look at the  
4 left column, the all households, this would be the share of viewing  
5 that all households have for each of these networks. And then for  
6 any household that watched at least one hour of WE, this is their  
7 viewership.

8 Q Okay. And you say GSN is number . Do you see that?

9 A Yes, I do.

10 Q And you remember he showed you is  
11 is and Wedding Channel 70 -- Wedding Central?

12 A Also a few more.

13 Q Well, you will have a chance. But he showed you  
14 whichever ones he showed you. He showed you a bunch that were  
15 below -- let's try to shortcut this -- GSN. Right? And do you see  
16 that there are a number of members of the competitive set that were  
17 above GSN?

18 A Yes, I do.

19 Q is number ?

20 A Yes, it is.

21 Q is .

22 A Yes.

23 Q is .

24 A Yes.

25 Q is .

1 A Yes.

2 Q is .

3 A Yes.

4 Q is .

5 A Yes.

6 Q is .

7 A Yes, sir.

8 Q Okay, put that away, please. Now, did you also look at  
9 where the members of the competitive set ranked along your distance  
10 analysis with respect to advertisers?

11 A Well, one can look at my table and see that, yes.

12 Q Which table is that?

13 A This would be Table 17.

14 Q And could you tell us what Table 17 tells you about the  
15 competitive set?

16 A This is that --

17 Q Again, just root us in what this table is.

18 A Right, I was going to describe it. This is the  
19 statistical or quantitative distance analysis that I did that  
20 incorporates the relevant demographic information into a standard  
21 measure of how far networks are in terms of all the demographic  
22 information that we looked at earlier today: age, gender of the  
23 viewers, et cetera.

24 JUDGE SIPPEL: And what tab is this?

25 THE WITNESS: This is Table 17.

1 MR. COHEN: It is in the back of the book, Your Honor.

2 THE WITNESS: It is the second to the last pack.

3 JUDGE SIPPEL: I got you, Table 17.

4 MR. COHEN: And then if you put 663, again, Your Honor,  
5 let me just move 663 into evidence so we don't have a loose piece  
6 of paper.

7 MR. PHILLIPS: No objection.

8 MR. COHEN: Cablevision 663.

9 JUDGE SIPPEL: Okay, 663 is received.

10 (Whereupon, the above-referred to document was  
11 received into evidence as CV Exhibit No. 663.)

12 BY MR. COHEN:

13 Q Okay, so if you look at the networks on 663, in terms of  
14 the distance analysis, let's just look at the top 12. How many of  
15 the top 12 on your distance analysis are members of WE's  
16 competitive set?

17 A I need to go through them because I haven't done this in  
18 this way. But

19

20 So, of the 12 are listed in the  
21 competitive set.

22 Q And does that surprise you, based your distance analysis?

23 A No, it does not.

24 Q Why not?

25 A Because one measure of competition of why you would be in

1 the competitive set is from the perspective of advertisers. And so  
2 this is incorporating types of information that advertisers would  
3 look at in terms of the demographics. So, it is not surprising  
4 that one is viewing in my quantitative analysis, the same channels  
5 that some executives saw as their competitive set for advertisers.

6 Q Now, you were asked some questions by Mr. Phillips about  
7 both duplication. Remember he asked you if he liked it or didn't  
8 like it?

9 A Yes, I do.

10 Q Okay, so let me try to give you a little more economic  
11 question. Okay, first of all, before we do that, you were going to  
12 describe what both duplication is. So, can you, just for the  
13 record, tell us what Nielsen is measure in its both duplication  
14 analysis?

15 A Sure. What both duplication is, is it takes the overlaps  
16 of viewers. So, it's a universe of people who view, say, both GSN  
17 and WE, and it divides it by the total number of viewers that are  
18 GSN viewers plus the total number of viewers that are WE viewers.  
19 So, it takes, in essence, which viewers watch both divided by the  
20 total universe of viewers for both channels.

21 Q And from a methodological perspective, what are your  
22 issues with respect to both duplication in terms of measuring  
23 similarity or competitiveness of networks?

24 A It's unclear what it means as a matter of economics.  
25 Because if I'm sitting at WE thinking about what happens, say, if

1 I degrade the quality of my programming while I increase the price  
2 of my programming, where will my viewers go? That is the  
3 traditional way to think about a competitive analysis, and this  
4 doesn't inform that question because that would be the question of  
5 where are people leaving when they -- what would they watch if they  
6 weren't watching WE.

7 You could ask the same question for GSN. What would they  
8 watch if they weren't watching GSN? So, those two metrics, the  
9 primary duplication has some economic concept behind it, but both,  
10 when you are dividing the universe of people who watch both divided  
11 by the total number of viewers, it doesn't help in terms of the  
12 kinds of analysis that I think an economist should do in terms of  
13 competition between networks. And I can't even understand what it  
14 really is very useful for understanding, whether you look at it  
15 from the GSN perspective or the WE perspective.

16 Q Okay. Well, actually, let's just follow up on that last  
17 thing. If you could turn in your direct binder to the tab that  
18 says "Duplication Results" and that comes right after tab 10 in the  
19 binder. Duplication results and remember we looked at this on your  
20 direct and Mr. Phillips brought your attention to something about  
21 this on his cross-examination. Let me know when you're there.

22 A I'm there.

23 JUDGE SIPPEL: Table 10?

24 MR. COHEN: No, the next tab, Your Honor. It says  
25 "Duplication Analysis."

1 JUDGE SIPPEL: Oh, I see that.

2 BY MR. COHEN:

3 Q Okay, so this is at page 77 and 78 of the direct  
4 testimony. So, now, if you turn to what is page 78, which is the  
5 second page of this tab, Mr. Phillips showed you these numbers of  
6 WE's duplication rank from the perspective of GSN. Do you see  
7 that?

8 A Yes.

9 Q And they were either ranked first or second?

10 A Yes.

11 Q Okay, turn to the previous page.

12 A Sure.

13 Q And did you also report here GSN's both duplication rank  
14 from the perspective of WE?

15 A Yes, I did.

16 Q Okay, and how do those numbers compare with the both  
17 duplication from the perspective of GSN?

18 A They show a different result, a pretty significantly  
19 different result. Both duplication from the perspective of WE,  
20 depending upon the demographic one looks at, one finds that GSN is  
21 ranked something between and .

22 Q Okay. And I know you have some criticisms of this  
23 duplication analysis overall compared to your direct test and your  
24 switching data, but which perspective is more important, from your  
25 perspective, the perspective from WE's perspective or from GSN's

1 perspective and why?

2 A When thinking about the competition that WE tv faces, the  
3 perspective from WE tv is the most appropriate one to look at.

4 Q And tell us why.

5 A The reason is, again, as I said, if you are a WE tv  
6 executive and you're thinking about who you are competing against,  
7 what you worry about is if you increase prices or decrease quality,  
8 where would your viewers go? And the primary duplication from the  
9 perspective of WE helps to inform that question, where would your  
10 viewers go, in thinking about who you compete with, who WE competes  
11 against. So, that's why, from the perspective of WE, in assessing  
12 who competes with WE tv is the appropriate way to look at it.

13 MR. COHEN: Now you can put that away, sir.

14 JUDGE SIPPEL: Let me ask one clarification question.

15 MR. COHEN: Of course.

16 JUDGE SIPPEL: Your numerator was GSN viewers plus WE tv  
17 viewers, and that would be the total number of --

18 THE WITNESS: No.

19 JUDGE SIPPEL: No?

20 THE WITNESS: I confused it a little bit. Sorry. It's  
21 the people who watch both GSN and WE.

22 JUDGE SIPPEL: Right, you're adding those together.

23 THE WITNESS: No, it's people who are watching both of  
24 them. So, you watch at least six minutes of it per quarter divided  
25 by the total number of people who watch either of the networks.

1 JUDGE SIPPEL: Oh, either network. Alright. Okay,  
2 either network. I've got you.

3 BY MR. COHEN:

4 Q So, it's both divided by either?

5 A Yes.

6 Q Okay. Now, you were asked some questions about set-top  
7 box data and whether it was audited or verified or subject to  
8 third-party review. We had a few questions about that. Do you  
9 remember that?

10 A Yes, I do.

11 Q Do any of those questions make a difference to you in  
12 your reliance on the set-top box data for the purpose of your  
13 analysis?

14 A No, they do not.

15 Q Why not?

16 A Well, for a few reasons. One, I tested the data myself.  
17 I went to compare the data to the Nielsen data, for example, both  
18 in terms of viewership numbers but also in terms of what did the  
19 result show from my direct test and if you used the best available  
20 evidence from Nielsen. That's number one.

21 Number two, the business executives use this data in the  
22 ordinary course of the business. They find it reliable to make  
23 real world business decisions. And so outside the context of this  
24 litigation, or any other litigations, they do this to make the  
25 decisions that are seeking to maximize profits.

1           And it is a very rich data set.           observations for  
2   Cablevision subscribers is           times more than the number of  
3   observations you could get if you just looked at Cablevision  
4   subscribers who are within the Nielsen data.

5       Q     Is it relevant to you that you are not comparing across  
6   MSOs? Is that part of the reason why the lack of audit doesn't  
7   make a difference to you?

8       A     It's less important because what you would want, if you  
9   were comparing across MVPDs, because you would want them to collect  
10   the data in the same way. But when you are looking just within  
11   Cablevision, you don't need to worry about whether Cablevision's  
12   collection method is different than say another cable company's.

13      Q     Why?

14      A     Because we are not doing an analysis of how subscribers  
15   at Cablevision reacted versus, say, subscribers at Time Warner. We  
16   are just looking within Cablevision. So, the fact that they may  
17   have a different methodology for doing things doesn't affect the  
18   results or have any bias whatsoever.

19      Q     Okay, turn in your cross-examination book to GSN 451,  
20   which Mr. Phillips showed you. It is the last tab in his cross  
21   book. And let me know when you are there. That is Table 8 from  
22   Dr. Singer's report.

23      A     I'm there.

24           MR. COHEN: Let me just see if the Judge is there.

25           JUDGE SIPPEL: 451?

1 MR. COHEN: 451, the last one in Mr. Phillips' book.

2 JUDGE SIPPEL: Alright.

3 BY MR. COHEN:

4 Q Now, I think you testified, in response to Mr. Phillips'  
5 questions, you were having trouble with the word peer reflecting  
6 the various MSOs that are listed on Table 8 in comparison to  
7 Cablevision.

8 A That's correct.

9 Q And why is that?

10 A Because in thinking about a cable company of similar  
11 size, Comcast has roughly 20 million more subscribers than  
12 Cablevision, whereas Mediacom has roughly two million different  
13 less subscribers than Cablevision.

14 And so in thinking about a similarly sized MVPD, one  
15 should be looking at ones that have similar footprints in terms of  
16 size and scope, et cetera. And none of these comparisons are  
17 perfect. None of these peers are perfect. And as I described  
18 earlier today, if one extends this to include those other peers,  
19 Cablevision doesn't look out of whack with how those other cable  
20 companies are carrying GSN.

21 Q Can you just remind us, again, which cable MSOs that are  
22 closer in size to Cablevision that you mentioned this morning. I  
23 think you just said Mediacom. Were there others?

24 A Yes, so, if I extended this table to include the next  
25 cable companies down on the list, that would include -- I'm doing

1 this by heart, but something on the order of magnitude of Mediacom,  
2 Suddenlink, at the time in June 2011, Insight Communications, Cable  
3 ONE, and Wide Open West. And two of those five didn't carry GSN at  
4 all. And I believe didn't carry it all for some period  
5 and then carried it on a tier for some period. And the other two  
6 carried it, and carried it on a tier that  
7 reached less than half of their subscribers.

8 Q Now, you can put that document away, sir. Could you turn  
9 in your book to Table 25? You were asked some questions about that  
10 by Mr. Phillips. And that is on page 128. And then also grab what  
11 we now have learned the new term of art in the rules of evidence as  
12 a loosey. That is Exhibit 452, a footnote to the Wall Street  
13 Journal.

14 JUDGE SIPPEL: Some day they will refer to that as a  
15 "Sippel Loosey." Claim to fame.

16 (Laughter.)

17 BY MR. COHEN:

18 Q And do you remember -- do you have those two documents in  
19 front of you? So you need Table 25 on page 128 of your direct  
20 testimony and GSN Exhibit 452, which are the networks on the Sports  
21 Tier. Do you see that?

22 A Yes, I do.

23 Q And you were asked, initially, I believe, by Mr.  
24 Phillips, whether any of the networks on Exhibit 452 --

25 MR. COHEN: Are you missing 452, Your Honor?

1 JUDGE SIPPEL: It's okay, I've got it.

2 MR. COHEN: Okay.

3 BY MR. COHEN:

4 Q Whether any of the networks on 452 were on your viewer  
5 concentration chart. Do you see that?

6 A Yes, I do.

7 Q And why aren't these networks on Table 1 of the Sports  
8 Tier in your viewer concentration chart?

9 A Because the viewer concentration chart is just for those  
10 channels that are on the Family Tier as of April 2010.

11 Q Okay. So, it has nothing to do -- have you actually  
12 studied what the concentration is of any of these networks?

13 A No. I studied the concentration of channels that were on  
14 the Family Tier, not the concentration of the channels that were on  
15 the Sports Tier.

16 Q So, it would be wrong to imply from the questions earlier  
17 today that the channels on the Sports Tier were below number 51 on  
18 Table 55?

19 A That would be wrong to imply that, yes.

20 MR. COHEN: Okay, you can put that away, sir.

21 JUDGE SIPPEL: The Family Tier is the extended basic. Is  
22 that right?

23 THE WITNESS: Functionally equivalent to that, yes.

24 BY MR. COHEN:

25 Q Now, you were asked some questions about whether it was

1 intuitive that, since people who watch GSN complained a lot to  
2 Cablevision as a retiering decision, it was intuitive that they  
3 would churn. Do you remember that?

4 A Yes, I do.

5 Q Okay. Did you in fact check intuition by doing an  
6 empirical analysis?

7 A Yes, I did.

8 Q Okay, and remind us what your empirical analysis shows.

9 A It showed that those people who watch GSN were not more  
10 likely to churn than those people who did not watch GSN.

11 Q Okay. And Dr. Singer also did a churn analysis that you  
12 criticized earlier. Correct?

13 A That is correct.

14 Q And did Dr. Singer's churn analysis show that tens of  
15 thousands of people would churn?

16 A No, it did not.

17 Q What did his churn analysis show?

18 A He had a range of his point estimates. So, his estimate  
19 was between people churned but it was not  
20 statistically significant. That is, it was not reliably different  
21 from zero or statistically different from zero.

22 Q Okay. But even putting to one side the fact that it was  
23 not statistically significant, Dr. Singer's showed that  
24 of the people who complained churned. Correct?

25 A That is roughly correct, yes.

1 Q Okay. Now, one or two more questions. Remember when you  
2 were shown Mr. Dolan's testimony about market power?

3 A Yes.

4 Q Okay. What is market -- let me just ask you this  
5 question. Market power is a term that economists think about a  
6 lot. Right?

7 A Yes, it is.

8 Q Okay. In your view, does Cablevision have market power?

9 A It doesn't have the type of market power that rises to a  
10 competition issue. And the reasons is --

11 JUDGE SIPPEL: Well, does it have market power?

12 THE WITNESS: Well, the technical economic definition of  
13 market power is the ability to price above marginal cost. And  
14 every firm operating in a market that has some differences has some  
15 degree of market power.

16 JUDGE SIPPEL: So, they do have some degree of market  
17 power.

18 THE WITNESS: Right, but --

19 JUDGE SIPPEL: Okay, then answer the next question.

20 MR. COHEN: Okay, so, the next question is -- well, just  
21 tell us. Do you think they have a lot of market power, a little  
22 market power? What are the market conditions that affect cable  
23 division's degree of market power?

24 THE WITNESS: The term that a lot of people use is  
25 significant market power, substantial market power to equate with

1 a firm that has a dominant or strong market position. Cablevision  
2 is not that type of firm. And the problem with the type of  
3 analysis or the data that I was asked about when if you just look  
4 at existing market shares, is it ignores the dynamics of the  
5 industry.

6 And I think FCC itself and commentators and analysts and  
7 business people have all experienced what is going on in the cable  
8 industry, which is over the last 20 years there has been a dramatic  
9 increase in competition, first with the introduction of satellite  
10 TV, DIRECTV and Dish, then the introduction of the telcos, so AT&T  
11 and Verizon. And now internet-based television options, or over  
12 the top options, like Netflix and Hulu, et cetera.

13 JUDGE SIPPEL: Those are called substitutes. Right?

14 THE WITNESS: Precisely. And so because there are so  
15 many substitutes now for people sitting within the Cablevision  
16 footprint, Cablevision's ability to exercise market power has been  
17 handcuffed. Because now they face those competitive options that  
18 20, 30 years ago, they did not face, because 20 or 30 years ago, if  
19 you wanted to get multiple channels and you lived in Cablevision's  
20 footprint, your only option was to go to Cablevision. You did not  
21 have a DIRECTV or a Dish. You did not have AT&T or Verizon. You  
22 did not have a Netflix or an internet-based option like Apple TV.

23 So, the competitive environment that Cablevision faces  
24 today is much more vigorous than the environment that they faced 30  
25 years ago. And that's why they don't have the type of market power

1 today to exercise it, because they are competing against so many  
2 different options out there.

3 BY MR. COHEN:

4 Q And do you know what has been happening to Cablevision's  
5 share of the video market and its footprint?

6 A It's been declining.

7 MR. COHEN: I have no further questions for the witness.

8 MR. PHILLIPS: I've got just a few, Mr. Orszag. And who  
9 knows when I will get this chance again?

10 RECROSS-EXAMINATION

11 BY MR. PHILLIPS:

12 Q "They don't have the type of market power today that they  
13 had 30 years ago." I think that is what you just said. Do you  
14 agree with me that, notwithstanding the fact that they don't have  
15 the kind of market power today that they had 30 years ago, that  
16 they still have 61 percent market share, more or less, within their  
17 footprint?

18 A I already answered that, yes. That's roughly correct.

19 Q With your churn analysis, sir, your churn analysis that  
20 you just spoke to, when you did that for WE, what you did was to  
21 assume that the relationship between subscriber loss and viewership  
22 is the same for WE as that you observed for GSN. Correct, sir?

23 A That's not -- I did not do any analysis of WE churn. I  
24 only corrected the analysis that Dr. Singer did. I did not do my  
25 own independent analysis.

1 Q You did not do an analysis of WE for churn, but you did  
2 do an analysis which you applied to WE in which you assumed that  
3 the relationship between subscriber loss and viewership is the same  
4 across channels, sir, did you not? I am referring to page 256 of  
5 your testimony. Page 192, paragraph 256.

6 A And I prefaced this whole section, sir --

7 Q Sir, I'm sorry, there is no question pending. I am just  
8 turning you to that page. If you go to the top of page 192, the  
9 first full sentence, and I'll read. Are you with me, Your Honor?

10 JUDGE SIPPPEL: "If one assumes"?

11 BY MR. PHILLIPS:

12 Q "If one assumes that the relationship between subscriber  
13 loss and viewership is the same across channels," and by the same  
14 across channels, you mean between GSN and WE tv, don't you, sir?

15 A Yes.

16 Q Okay. Now, if you make that assumption, then you are  
17 doing away with any differentiation between GSN and WE based on the  
18 intensity of the viewership, correct, sir?

19 A No, that's not correct.

20 Q Isn't that what you're assuming? Because you're saying,  
21 if my intuitive observation that a network with higher intensity  
22 would have more churn, aren't you assuming that away here, when you  
23 say you are going to assume the same subscriber loss and  
24 viewership?

25 A I'm having trouble with this extracting one sentence,

1 sir. Because if you look at footnote 358, which is the footnote  
2 right before, I am citing to Dr. Singer and I note that this  
3 estimate is unreliable for the reasons I discuss above. The  
4 reasons I discuss above, this whole section is titled "Dr. Singer's  
5 Conclusion that Cablevision Incurred Greater Losses from Broad  
6 Carriage of WE tv and Wedding Central than from Broad Carriage of  
7 GSN Lacks a Valid Economic Basis."

8 My entire section is my criticism. But then I say look,  
9 if I apply a consistent methodology, because he does not apply a  
10 consistent methodology, one finds that one would have found a  
11 larger effect for WE than for GSN. This is all within his four  
12 corners.

13 Q I understand. So, I take it that you would agree that  
14 your model is no more reliable than you would say his model is,  
15 since your model is based on his model. Correct, sir?

16 A I think this whole idea --

17 JUDGE SIPPEL: Well, can you answer his question?

18 THE WITNESS: I don't believe it's at all reliable. This  
19 isn't my model. This is Dr. Singer's. I do not find it reliable.

20 BY MR. PHILLIPS:

21 Q And so your model based on his model is no more reliable  
22 than this model, sir. Correct?

23 A I don't have a model.

24 Q Okay, your analysis based on his model is no more  
25 accurate than you think this model is.

1 A That is correct.

2 Q Okay. And when you do that analysis, as it says here,  
3 you assumed that the subscriber loss and viewership was the same  
4 across WE and GSN. Correct, sir?

5 A Those are the words, yes.

6 Q Okay, thank you, sir. The peer analysis, you say -- and  
7 if we could turn back to what is it 451 for a second. So, and I  
8 believe you agreed with me that these were all the MVPDs above two  
9 million subscribers but you think there are some left off. Is that  
10 correct, sir, in terms of peers?

11 A This only includes those that are one million less and 20  
12 million more.

13 Q You think there are some left off, sir. Correct?

14 A That is correct.

15 Q Mediacom is one you mentioned. Correct, sir?

16 A That's correct.

17 Q And GSN had about subscribers on Mediacom. Is  
18 that correct, sir.

19 A I don't believe that's correct but I'm not sure.

20 Q You don't know.

21

22 A That's correct.

23 Q Okay. And in terms of the two closest peers in terms of  
24 size to Cablevision that are on this chart, what are they, sir?

25 A It would be AT&T and Verizon.

1 Q And they average out at about percent.

2 A That is correct.

3 Q That's the penetration that Cablevision has,  
4 isn't it, sir?

5 A Roughly speaking on a percentage basis, yes.

6 Q There's my math skills again. Now, Mr. Cohen asked you  
7 about perspective. And he was talking about perspective and the  
8 duplication analysis and the distance analysis. And I think we  
9 talked about it earlier that it can be different -- results can be  
10 different, depending on which perspective you look at. Correct?

11 A That is correct.

12 Q And you mentioned that you thought WE was good, was the  
13 best perspective, because you would want to know if your quality of  
14 your programing was going to erode your audience base. Correct,  
15 sir?

16 A I will agree to it but that is not precisely what I said.  
17 It is not going to matter.

18 Q But, sir, if you wanted to know where GSN viewers went,  
19 if they lost GSN, you would look at that from a GSN perspective,  
20 wouldn't you, sir? Yes or no, sir?

21 A You can't answer it as a yes or no question.

22 Q Okay. Is it in fact the reason that you looked at your  
23 direct test from a GSN perspective because you wanted to know where  
24 the GSN viewers went when you took it away from them? Isn't that  
25 correct, sir?

1 A That is the first part of the analysis.

2 Q Thank you, sir.

3 A There is a second part.

4 Q Now, your distance analysis, sir, I wanted to ask you  
5 about that. That is also one of those where it depends on which  
6 perspective you look at as to what the results are. Correct, sir?

7 A Not in a dramatic way, but in a way that it is different,  
8 yes.

9 Q Are the results equal from either perspective, sir?

10 A They are not identical, no.

11 Q And are they significantly different, sir?

12 A I haven't tested -- they actually are the same distance.  
13 The distance measure that I measure quantitatively is the same  
14 number, whether you look from GSN's perspective or from WE's  
15 perspective. So, it's actually the same number in both analyses.

16 Q There are more networks that are closer to WE and there  
17 are fewer networks that are closer to GSN, if I understood your  
18 testimony, sir. Is that correct?

19 A That is correct.

20 Q So that from the GSN perspective, WE is relatively close,  
21 or at least closer than it is from vice versa. Correct, sir?

22 A It is number 43, according to Table 18, if you look from  
23 the perspective of GSN. And it is number 75, if you look from a  
24 perspective of WE tv.

25 Q When you do the distance analysis, sir, you are the one

1     who selects the variables to include in that distance analysis,  
2     aren't you, sir?

3       A     Yes, it is -- yes, I do.

4           MR. PHILLIPS: I think that's it, Your Honor. I don't  
5     have any further questions.

6           MS. KANE: Your Honor?

7           JUDGE SIPPEL: Yes.

8           MS. KANE: The Bureau has some questions.

9           JUDGE SIPPEL: Okay, you may go ahead, Ms. Kane, please.

10          BY MS. KANE:

11       Q     Good afternoon, Mr. Orszag. My name is Pamela Kane and  
12     I'm with the Enforcement Bureau.

13       A     Nice to meet you.

14       Q     And with me is Mr. Knowles-Kellett.

15       A     Nice to see you again, sir.

16           MR. KNOWLES-KELLETT: Nice to see you, sir.

17          BY MS. KANE:

18       Q     We just have a few questions. Earlier this morning, I  
19     believe you testified about a number, I think it was  
20     subscribers on the Sports Tier. Do you recall that testimony?

21       A     Yes, I do.

22       Q     Can you explain in a little bit greater detail where that  
23     number, how you derive that number and where that came from?

24       A     Sure, I would be happy to. And if I don't do a good job  
25     explaining it, please ask another question because it is

1 complicated.

2 Q Oh, I will.

3 A So, I look econometrically and I ask the question of you  
4 see an increase of about total  
5 increase in Sports Tier subscribership. And if you look at the  
6 propensity -- the probability of subscribing to the Sports Tier for  
7 those viewers who were heavy watchers of GSN versus those who  
8 weren't heavy watchers of GSN, you see a very significant  
9 difference in the probability of subscribing to the Sports Tier.

10 So, for example, the people who tended to watch a lot of  
11 GSN were far more likely to subscribe to the Sports Tier than those  
12 who were not watchers of GSN. So, what I do is I put this into an  
13 econometric model, where I try to estimate the probability that you  
14 would subscribe to the Sports Tier, based on how often you watch  
15 GSN. And that then helps to predict, in essence, the increase, the  
16 lift to the Sports Tier from the tiering of GSN.

17 And so this is very similar to the same type of -- it is  
18 a very similar analysis to the churn analysis I do. And what it  
19 does is it asks the question of from April 2010, before there was  
20 a retiering, you then see the retiering, and how do people behave  
21 after the retiering. And I am finding that roughly the  
22 increase in subscribership to the Sports Tier that we observed  
23 during that period was due to the carriage of GSN.

24 Q So, if I understand it correctly, this is just -- it is  
25 based on an econometric model but it is not an actual number of

1 subscribers of the you know were because of GSN. Correct?

2 A I didn't interview, obviously, all but I am using  
3 statistics to estimate that number and to differentiate between  
4 those who subscribed because of the sports on the tiers versus  
5 those who subscribed because of GSN.

6 Q And why was it that you used that particular time period,  
7 April 2010 through April 2011, rather than limit it to the time  
8 period post-hearing?

9 A Because you need a benchmark from before to compare it  
10 to. And the retiering occurred in February, as you know, but the  
11 retiering or the dropping of Wedding Central occurred in July. So,  
12 I made it a month between February and July.

13 And this data set is massive, to say the least. It is  
14 data for people. It is, effectively, every second what  
15 their box is tuned to. So, it is an amazingly large data set. So,  
16 trying to process it for many months was a massive -- would have  
17 been too massive of a chore. So, I was looking for the same month  
18 in 2010 as in 2011, a month between February and July. And so  
19 April was the month right between.

20 JUDGE SIPPEL: What's the total number of viewers on  
21 sports channel?

22 THE WITNESS: On the Sports Tier?

23 JUDGE SIPPEL: The Sports Tier, I mean, yes. Sports  
24 tier.

25 THE WITNESS: I can give that to you.

1 JUDGE SIPPEL: Total number.

2 THE WITNESS: I believe it is roughly -- it should be  
3 roughly percent of their subscriber base. So, that would  
4 about That is as of June 2011.

5 JUDGE SIPPEL: That was

6 THE WITNESS: No,

7 JUDGE SIPPEL:

8 BY MS. KANE:

9 Q So, if I understand correctly, you used set top box data  
10 from April 2010 and then a different set of data from April 2011  
11 and compared the two?

12 A You have two things going on in there. So let me try to  
13 break it apart, if you don't mind.

14 You have a group of people who were in the set who had  
15 set top boxes in 2010 and weren't in the data. Once you are in the  
16 data set, you stay in the data set for as long as you are a  
17 subscriber. There's natural churn that goes on in Cablevision  
18 people who disconnect. So, those people, obviously, in 2011 are  
19 not included in the April 2011 data.

20 In order to do what is called a balanced sample, I only  
21 look at the people who are in both the April 2010 and the April  
22 2011 to do the first part of my analysis. And so that helps to  
23 ensure that the same people are in both data sets. So, it is  
24 literally the same household for, I think, it is

25 by the same exact household. And I am looking at them in

1 April 2010 and I'm looking at their behavior in April 2011.

2 Q And can you confirm that the set-top box data that you  
3 used for that particular analysis is the data that you are talking  
4 about in paragraph 150 of your direct testimony, 149-150?

5 I just want to make sure we are all looking at the same  
6 data.

7 A Yes, it is.

8 Q I just have one other question. We have talked today  
9 about, and we have used the terms reach and viewer concentration a  
10 couple of times. And I believe you testified earlier that you  
11 believe there is a difference between those two terms. Is that  
12 correct?

13 A Yes.

14 Q Could you describe what you believe those differences to  
15 be?

16 A Sure. Concentration -- you think about reach in the way  
17 that Nielsen describes reach and I may get the set -- I want to get  
18 the concept right -- is how many people watch your network in a  
19 given period. And so how many people are you actually touching?

20 So, you could think about one network, let's just say  
21 Network A, that everybody in the country watches at least one  
22 month. So, it basically has 100 percent reach.

23 You can think about a second network, where it reaches a  
24 far fewer number of people but those people are highly  
25 concentrated. So, it is like one person watches that network.

1 Like I love golf and so today is a hard day missing the British  
2 Open, but we will ignore that. If I sat there and watched the Golf  
3 Channel for a hundred hours in a month and everybody else in this  
4 room never watched the Golf Channel, Golf Channel, in this room,  
5 would have very high viewer concentration, just me.

6 So, that is the difference. One could be the whole room  
7 watching the channel, that is reach; and the second is what  
8 percentage of the channel's viewership is accounted for by a small  
9 number of people.

10 MS. KANE: Thank you for that clarification. Nothing  
11 further from the Bureau, Your Honor.

12 JUDGE SIPPEL: I'm at a loss. And I guess we are  
13 completed with this witness.

14 MR. COHEN: Yes, Your Honor.

15 JUDGE SIPPEL: Mr. Orszag, you are free to go.

16 THE WITNESS: Thank you, sir.

17 MR. COHEN: Your Honor, two things.

18 JUDGE SIPPEL: Do you want to do it off the record or on  
19 the record?

20 MR. COHEN: No, I think on the record. One is, Your  
21 Honor asked last week for the Management Agreement.

22 JUDGE SIPPEL: I did.

23 MR. COHEN: It's actually called the Consulting  
24 Agreement, of course. But it's dated March 29, 2001 and I have  
25 just marked it as Exhibit 660.

(Whereupon, the above-referred to document was marked as CV Exhibit No. 660 for identification.)

MR. COHEN: You will see it refers to the 3.5 percent fee. And if Your Honor would like us to put that into evidence, we will.

JUDGE SIPPEL: I definitely want it in evidence. Since it;s your document, it would be nice if you sponsored it.

MR. COHEN: And Your Honor, if you look at paragraph four of this document, you will see the reference to the fee.

JUDGE SIPPEL: Oh, number four.

MR. COHEN: Paragraph number four.

JUDGE SIPPEL: Compensation and reimbursement expenses.

MR. COHEN: Remember the testimony was the ?

JUDGE SIPPEL: Yes, sir, I see it.

MR. COHEN: Is there a question, Mr. Schmidt?

MR. SCHMIDT: Are these references ?

MR. COHEN: On the face of this document? No, it doesn't. But the Judge asked for this document, so I'm offering it.

JUDGE SIPPEL: Yes. Did you have any objection to that, Mr. Schmidt?

MR. SCHMIDT: No, we think it should be in evidence. And the only other question I would ask is it references an earlier agreement dated January 1, 1987. Do you know if you have that?

1           MR. COHEN: I have no idea. It took a good deal of doing  
2 to find the 2001 agreement. I think '87 would be a little before  
3 the period in question here.

4           MR. SCHMIDT: I just didn't know if this was like just a  
5 little follow on.

6           MR. COHEN: My understanding is this is a standalone  
7 agreement.

8           MR. SCHMIDT: Okay.

9           JUDGE SIPPEL: I'll take that representation and receive  
10 CV Exhibit 660 into evidence.

11                   (Whereupon, the above-referred to document was  
12 received into evidence as CV Exhibit No. 660.)

13           MR. COHEN: And, Your Honor, we can do this on or off.  
14 Maybe we could go off for a minute because I'm not sure we have  
15 totally caught up.

16           JUDGE SIPPEL: Let's go off the record.

17                   (Whereupon, the above-entitled matter went off the record  
18 at 3:39 p.m. and resumed at 3:48 p.m.)

19           JUDGE SIPPEL: Okay, let's go back on the record. The  
20 first order of business, Mr. Schmidt, you have a certain number of  
21 documents that you now want to move into evidence.

22           MR. SCHMIDT: Yes, Your Honor.

23           JUDGE SIPPEL: Give me the exhibit number, the proposed  
24 exhibit number and identify what the document represents.

25           MR. SCHMIDT: The first one is GSN Exhibit 343, which is

1 a Cablevision 2011 proxy statement.

2 JUDGE SIPPEL: A 2011 proxy statement. Wow, okay. Any  
3 objection?

4 MR. COHEN: No objection, Your Honor.

5 (Whereupon, the above-referred to document was received  
6 into evidence as GSN Exhibit No. 343.)

7 JUDGE SIPPEL: Okay, next one.

8 MR. SCHMIDT: GSN Exhibit 344, which is a Cablevision  
9 2015 proxy statement.

10 MR. COHEN: No objection, Your Honor.

11 JUDGE SIPPEL: 2015?

12 MR. SCHMIDT: Yes, Your Honor.

13 JUDGE SIPPEL: Thank you. That's in. Exhibit 344 is in.

14 (Whereupon, the above-referred to document was received  
15 into evidence as GSN Exhibit No. 344.)

16 JUDGE SIPPEL: The next one?

17 MR. SCHMIDT: The next one, Your Honor, is Exhibit 345,  
18 which is a 2014 Form 10-K for Cablevision.

19 JUDGE SIPPEL: 2014 10-K --

20 MR. SCHMIDT: Yes, Your Honor.

21 JUDGE SIPPEL: For Cablevision. Any objection to that?

22 MR. COHEN: No objection, Your Honor.

23 JUDGE SIPPEL: Okay, that's GSN or Gameshow Exhibit 345.  
24 It's received in evidence.

25 (Whereupon, the above-referred to document was

1 received into evidence as GSN Exhibit No. 345.)

2 JUDGE SIPPEL: Next one.

3 MR. SCHMIDT: The next one is Exhibit 347, Your Honor,  
4 skipping a number. It is a Cablevision 10-K for the year ending  
5 2009.

6 JUDGE SIPPEL: 10K for 2009.

7 MR. COHEN: No objection, Your Honor.

8 JUDGE SIPPEL: Okay, GSN 347 is received in evidence.

9 (Whereupon, the above-referred to document was  
10 received into evidence as GSN Exhibit No. 347.)

11 MR. SCHMIDT: The next one, Your Honor, is GSN 348, which  
12 is the Cablevision 10-K for the year ending December 31, 2010.

13 JUDGE SIPPEL: December 31. What's the date? In the  
14 year 2010?

15 MR. SCHMIDT: Yes, Your Honor.

16 JUDGE SIPPEL: Any objection?

17 MR. COHEN: No objection, Your Honor.

18 JUDGE SIPPEL: 348 is in.

19 (Whereupon, the above-referred to document was  
20 received into evidence as GSN Exhibit No. 348.)

21 JUDGE SIPPEL: Next one.

22 MR. SCHMIDT: The next one is GSN Exhibit 341 -- 349, I  
23 apologize -- 349. Cablevision 10-K for the year ended December 31,  
24 2011.

25 JUDGE SIPPEL: December 31, 2011.

1 MR. COHEN: No objection.

2 JUDGE SIPPEL: Thank you, 349 is received. It is in.

3 (Whereupon, the above-referred to  
4 document was received into evidence  
5 as GSN Exhibit No. 349.)

6 MR. SCHMIDT: The next one, Your Honor, is GSN Exhibit  
7 350, Cablevision 10-K for the year ending December 31, 2012.

8 JUDGE SIPPEL: Okay, 2012. No objection?

9 MR. COHEN: No objection, Your Honor.

10 JUDGE SIPPEL: 350 is in.

11 (Whereupon, the above-referred to document was  
12 received into evidence as GSN Exhibit No. 350.)

13 MR. SCHMIDT: The next one is GSN Exhibit 351, which is  
14 a 10K for Cablevision for the year ending December 31, 2013.

15 JUDGE SIPPEL: Any objection?

16 MR. COHEN: No objection, Your Honor.

17 JUDGE SIPPEL: All right, 351 is in.

18 (Whereupon, the above-referred to document was  
19 received into evidence as GSN Exhibit No. 351.)

20 MR. SCHMIDT: The next one is GSN Exhibit 401A, which is

21 --

22 JUDGE SIPPEL: 401A, like alpha?

23 MR. SCHMIDT: Yes.

24 JUDGE SIPPEL: Okay.

25 MR. SCHMIDT: It is a table of financial information

1 relating to Cablevision that Mr. Sperling used with Mr. Montemagno  
2 where, in conferring with ourselves and with Cablevision's  
3 attorneys, we adjusted some of the numbers slightly.

4 JUDGE SIPPEL: Is there any objection to that?

5 MR. COHEN: No objection, Your Honor.

6 JUDGE SIPPEL: You have seen the document, Mr. Cohen?

7 MR. COHEN: Yes, Mr. Kroup has reviewed it with us, yes.

8 JUDGE SIPPEL: It is in.

9 (Whereupon, the above-referred to document was  
10 received into evidence as GSN Exhibit No. 401A.)

11 MR. SCHMIDT: And the next and last one is GSN Exhibit  
12 435, which is a prettied up version of a white board that I created  
13 with Mr. Broussard during his cross-examination.

14 (Whereupon, the above-referred to document was  
15 marked as GSN Exhibit No. 435 for identification.)

16 MR. COHEN: Your Honor, I object to it being pretty but  
17 not to its introduction into evidence.

18 MR. KROUP: I guess we can litigate that, Your Honor.

19 JUDGE SIPPEL: I want to give the staff and counsel a  
20 little bit of leeway here.

21 MR. SCHMIDT: Especially because you had seen the  
22 original, Your Honor.

23 JUDGE SIPPEL: And Mr. Broussard was the candidate who  
24 was -- I mean, that was used in connection with his testimony.

25 MR. SCHMIDT: Yes, Your Honor, during the cross.

1 JUDGE SIPPEL: Got you. Okay, then, as you described it,  
2 GSN 435 is in evidence now.

3 (Whereupon, the above-referred to document was  
4 received into evidence as GSN Exhibit No. 435.)

5 JUDGE SIPPEL: Is that it?

6 MR. SCHMIDT: Okay, that is the end of our list. We then  
7 had the other small issues that I can speak into the record.

8 MR. COHEN: Counsel, let's just deal with exhibits, just  
9 so we get it on the record, clearly.

10 MR. SCHMIDT: Sure.

11 MR. COHEN: Your Honor, there are a number of exhibits  
12 that were, obviously, not used with the witness, a large number  
13 that the parties have resolved objections. We are assuming they  
14 are all being treated as in evidence. And we will give Your Honor  
15 a list of all of the exhibits that we think are in evidence,  
16 whether they were discussed in the course of the trial or not,  
17 rather than take the time now to introduce them one-by-one into the  
18 record.

19 JUDGE SIPPEL: Makes sense to me. And if it becomes --  
20 well, I think if it's of any use, as a utilitarian response to  
21 that, I may just attach it to an order, an omnibus order,  
22 basically, receiving them in so that there's some place in the  
23 world that they can be accounted for.

24 MR. SCHMIDT: That would be helpful, Your Honor.

25 MR. COHEN: Okay. I'm sorry, Mr. Schmidt. I didn't mean

1 to cut you off.

2 MR. SCHMIDT: No, that's okay.

3 JUDGE SIPPEL: Now, I also, since these are all proxies,  
4 your list of proxy statements, et cetera, are going to be fairly  
5 voluminous documents. What I'm trying to do is keep those in a  
6 separate volume or volumes and the loose exhibits which you have  
7 been using, these are the one-page, two-page, three-page, some  
8 exceptions to that, those are the ones that I want to have in a  
9 separate binder that we can readily retrieve; things like  
10 depositions and that kind of stuff.

11 Well, you know how to -- you've got so much imagination,  
12 I'm sure you will figure out a way. But you get my gist here.

13 MR. SCHMIDT: Yes.

14 MR. COHEN: Understood, Your Honor.

15 MR. SCHMIDT: We will divide out the 10-Ks to their own  
16 space so that they don't clog up everything else.

17 JUDGE SIPPEL: Yes.

18 MR. COHEN: And we will work with your office if there is  
19 anything we need to do to make it easier for Your Honor.

20 JUDGE SIPPEL: Well, I don't know if you can find anybody  
21 in. They are pretty tired. But fine, yes. We are always, Mr.  
22 Cohen, always available.

23 JUDGE SIPPEL: So, does the Bureau have anything that  
24 they want to --

25 MR. SCHMIDT: We did have a couple of other issues, once

1 the Bureau is done, Your Honor.

2 MS. KANE: No, Your Honor.

3 JUDGE SIPPEL: Let me hear it. Have you got anything?

4 MR. SCHMIDT: We would request that --

5 JUDGE SIPPEL: Wait a minute. Wait a minute. Let her  
6 go.

7 MR. SCHMIDT: Oh, I'm sorry.

8 MS. KANE: No, we don't have anything to add, Your Honor,  
9 other than the concerns we had raised off the record about the  
10 confidentiality provisions and to ensure that we can, to the extent  
11 necessary, that the parties review the entirety of the transcript  
12 to ensure that as much can be made public is made public.

13 JUDGE SIPPEL: Thank you. In other words, some of these  
14 in camera sessions, if you want to call those, extended perhaps  
15 beyond the time that was necessary and you want those reviewed by  
16 counsel and come up with a determination as to whether they can be  
17 opened up more. I get you. I think we all understand that.

18 MS. KANE: Correct, Your Honor. Thank you.

19 MR. SCHMIDT: We will do that. We will go back and look  
20 at the transcripts to see if there are places where the closed  
21 session could have been ended earlier.

22 We did have the one place that we mentioned off the  
23 record where a limited volume of material was inadvertently  
24 discussed in open session, when it should have been closed. And so  
25 we would request that that material be marked confidential. It

1 appears from the transcript from, I believe, Friday, that's page  
2 2459, line 24, through 2464, line 22. We would ask that that be  
3 treated as confidential.

4 JUDGE SIPPEL: 2459?

5 MR. SCHMIDT: 2459, line 24 is the start.

6 JUDGE SIPPEL: Yes.

7 MR. SCHMIDT: And 2464, line 22 is the end. So, just  
8 under five pages.

9 JUDGE SIPPEL: What is the line on 2464?

10 MR. SCHMIDT: Twenty-two is the end line, Your Honor.

11 JUDGE SIPPEL: Alright. I don't know, Katie, how we want  
12 to handle that, but we will certainly, somehow or other, come up  
13 with a way of doing it.

14 MR. SCHMIDT: Thank you, Your Honor.

15 JUDGE SIPPEL: I can't believe this. This is a four  
16 digit case. Wow.

17 MR. SCHMIDT: We've been here a while.

18 JUDGE SIPPEL: There is a bit of talking that has gone on  
19 since then. Okay.

20 MR. SCHMIDT: Two other small issues.

21 JUDGE SIPPEL: Yes, sir.

22 MR. SCHMIDT: One is on July 9th, the transcript  
23 identifies two exhibits as GSN exhibits when they are actually  
24 Cablevision exhibits. So, in the transcript, what is identified as  
25 GSN Exhibit 711 and 713 should be identified instead as Cablevision

1 Exhibits 711 and 713.

2 MR. COHEN: Yes, we agree, Your Honor.

3 JUDGE SIPPEL: Okay, Cablevision 711 and Cablevision 713.

4 MR. SCHMIDT: And that will be reflected in the binders  
5 that Your Honor receives. I think those will be in the new  
6 binders.

7 JUDGE SIPPEL: All right, we just want to be sure --  
8 well, whether they are public versions or not, we will see to it  
9 that there's some crossing out and remarking or something of that  
10 nature. In fact, you can submit them that way or the best way you  
11 think the public will understand what has been done. I don't know  
12 if you just want to substitute another copy for the documents.

13 MR. SCHMIDT: I think they were introduced properly. It  
14 was just there was a transcription error on the transcript.

15 JUDGE SIPPEL: I'm just trying to think of ways to make  
16 it the easiest way to -- see, I don't want confusion in the public  
17 record.

18 MR. COHEN: So, perhaps the easiest way is if the court  
19 reporter would simply make the correction, physically make the  
20 corrections on those pages --

21 JUDGE SIPPEL: Fine.

22 MR. COHEN: -- and substitute it as the trial transcript  
23 pages.

24 MR. SCHMIDT: Yes, that would fix it.

25 JUDGE SIPPEL: Fine.

1           MR. KNOWLES-KELLETT: Or place brackets in the transcript  
2 that say "corrected to."

3           JUDGE SIPPEL: I would rather avoid -- with the public,  
4 I would rather avoid brackets.

5           MR. SCHMIDT: Okay.

6           JUDGE SIPPEL: Perhaps we can do it with just a line  
7 through and a new edition or whatever different number. I would  
8 prefer it that way, but whatever. I leave it up to the discussion  
9 of counsel.

10          MR. SCHMIDT: And then final point, Your Honor. GSN  
11 Exhibit 447 on July 17, 2015, last Friday, is listed, I believe, on  
12 the transcript as coming into evidence but it was not actually  
13 offered into evidence. It's a deposition transcript and I don't  
14 think it should be in evidence.

15          JUDGE SIPPEL: 447?

16          MR. SCHMIDT: GSN 447, Your Honor.

17          JUDGE SIPPEL: It was just used to examine a witness but  
18 there's no point in bringing in as an exhibit.

19          MR. SCHMIDT: Correct, Your Honor.

20          JUDGE SIPPEL: Do you agree with that?

21          MR. COHEN: We agree, Your Honor.

22          JUDGE SIPPEL: Okay. So, the record will remain the way  
23 it is with respect to GSN 447.

24          MR. SPERLING: No, Your Honor, I think that's not right.  
25 I think the issue is that the transcript mistakenly identifies it

1 as having been admitted when in fact we had not move for its  
2 admission nor did you in fact admit it.

3 JUDGE SIPPEL: Oh, I see.

4 MR. SCHMIDT: It was just a transcript error, I think.

5 JUDGE SIPPEL: Did you change the transcript error?

6 MR. SCHMIDT: That would be the fix, would be to just  
7 change the transcript and show that it is not in fact admitted.

8 JUDGE SIPPEL: Yes, make that change.

9 MR. SCHMIDT: Thank you.

10 JUDGE SIPPEL: Sure. That sounds pretty thorough. Is  
11 there anything else?

12 MR. COHEN: Not from the Cablevision side, Your Honor.

13 JUDGE SIPPEL: Okay, enjoy your summer vacation.

14 MR. SCHMIDT: Your Honor, the only thing we would want to  
15 say before close the transcript is this has been a long trial. We  
16 appreciate the professionalism of our colleagues on the other side  
17 of the table. We appreciate Your Honor's time and the time of all  
18 of Your Honor's colleagues. We are very grateful for getting our  
19 chance to present our case.

20 MR. COHEN: And, Your Honor, obviously, we join in that.  
21 It has been a pleasure.

22 JUDGE SIPPEL: Well, all counsel are to be commended for  
23 their presentations. Every single one of you. And this has been  
24 another rewarding experience. I don't know how many more I can  
25 plan on having.

1 MR. SCHMIDT: There are none in the pipeline, Your Honor.

2 JUDGE SIPPEL: My friend, Judge Brown from Kansas, who  
3 passed away, he was 103 and he was still hearing cases. I don't  
4 think I will make that. But thank you very much.

5 We're off the record.

6 (Whereupon, the hearing in the above-entitled matter was  
7 adjourned at 4:02 p.m.)

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